

NEW JERSEY MEADOWLANDS COMMISSION  
AGENDA

DATE: October 24, 2007  
TIME: 10:00 a.m.  
PLACE: Lyndhurst, New Jersey  
RE: MONTHLY MEETING

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1. Pledge of Allegiance
2. Sunshine Law Statement
3. Roll Call

4. REVIEW OF MINUTES

- Meeting Minutes: September 19, 2007
- Closed Session Minutes: September 19, 2007

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5. SPECIAL PRESENTATIONS - River Barge Park

6. PUBLIC PARTICIPATION ON RESOLUTIONS

7. MEADOWLANDS BUSINESS DEVELOPMENT  
INCUBATOR

Resolution No. 07-88    Consideration of a Resolution  
                                 Authorizing the Executive Director  
                                 To Create the Meadowlands Business  
                                 Development Incubator

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8. VARIANCES/SPECIAL EXCEPTIONS

Resolution No. 07-89    Consideration of a Resolution Regarding  
                                 One Use Variance To Permit An 8,713 Square  
                                 Foot Automobile Sales Facility in the  
                                 Regional Commercial Zone and One Bulk  
                                 Variance To Allow 40 Parking Spaces  
                                 Whereas 65 Are Required, at the Premises  
                                 Identified as 850 Paterson Plank Road,  
                                 Block 155, Lot 4 in the Town of Secaucus  
                                 (File #07-222, Mack/Riverside Audi-Variance)

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Resolution No. 07-90      Consideration of a Resolution Regarding the      Pg. 20  
Application for Four (4) Bulk Variances for  
AG Holding, for the Premises Identified as  
70 Commercial Avenue, Block 61, Lot 3,  
In the Borough of Moonachie, New Jersey,  
Which Premises Are Located in the  
Commission's Light Industrial B Zone, as  
Follows:

1)Approval of a Bulk Variance for a front yard  
setback of 22.25 feet along West Commercial  
Avenue, whereas a minimum front yard  
setback of 35 feet is required.

2)Approval of a bulk variance for a front yard  
setback of 20.25 feet along Commercial  
Avenue, whereas a minimum front yard  
setback of 35 feet is required.

3)Approval of a bulk variance for the provision  
of only one 12 feet by 60 feet loading area,  
whereas two are required; and

4)Denial of a bulk variance for the provision of  
a loading area within the front yard setback  
along Commercial Avenue.

9. DEP AUDITS

Resolution No. 07-91      Consideration of a Resolution      Pg. 24  
Adopting the D.E.P. Escrow Account  
Audits.

10. SITE SUITABILITY STUDY

Resolution No. 07-92      Consideration of a Resolution Concerning      Pg. 47  
A Site Suitability Study for the Hawk Realty  
Property in the Town of Secaucus.

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11. SITE SUITABILITY RECOMMENDATIONS

Resolution No. 07-93	Consideration of a Resolution Concerning A Site Suitability Recommendation for 161 Railroad Avenue in the Borough of Ridgfield.	Pg. 81
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Resolution No. 07-94	Consideration of a Resolution Concerning A Site Suitability Recommendation for Property On Barczewski Street in the Town of Kearny.	Pg. 89
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Resolution No. 07-95	Consideration of a Resolution Concerning A Site Suitability Recommendation for 600 Sixteenth Street in the Borough of Carlstadt.	Pg. 100
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12. LEGAL

Resolution No. 07-96	Consideration of a Resolution Concerning A Judicial Consent Order in NJMC v. NYS&W.	Pg. 108
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Resolution No. 07-97	Consideration of a Resolution Concerning A Request for Commission Approval of a Settlement between Mark Jameson Contractors, Inc. and the NJMC.	Pg. 129
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Resolution No. 07-98	Consideration of a Resolution Authorizing the Acquisition of Block 137, Lot 5 in Carlstadt in connection with the Settlement of George Martin & George F. Barnes v. NJMC.	Pg. 136
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13. **MUNICIPAL ASSISTANCE PROGRAM**

Resolution No. 07-99	Consideration of a Resolution Authorizing the Executive Director to Appropriate Funds to District Municipalities Under the Municipal Assistance Program (MAP).	Pg. 139
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14. **COPIER EQUIPMENT**

Resolution No. 07-100	Consideration of a Resolution Authorizing a Lease Contract on a New Copier.	Pg. 141
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15. **REPORTS**

- a. Commissioners
- b. Executive Director
- c. Director
- d. HMMC Executive Director

16. **NEW BUSINESS**

17. **PUBLIC PARTICIPATION**

18. **CLOSED SESSION**

- a. Adopt Resolution No. 07-101 to hold Closed Session.
- b. Adjournment to Closed Session. The Commission Reserves the Right to Reconvene into Public Session, if necessary, to take Action on Closed Session Items.

**PLEASE CONTACT THE NJMC OFFICE (201-460-1700) PRIOR TO MEETING IF SPECIAL REQUIREMENTS ARE NEEDED UNDER ADA**

NEW JERSEY MEADOWLANDS COMMISSION

DATE: September 19, 2007  
TIME: 10:00 a.m.  
PLACE: Lyndhurst, NJ  
RE: MONTHLY MEETING MINUTES

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COMMISSIONERS PRESENT:

Eleanore S. Nissley, Acting Chairman  
Paul Stridick, Assistant Commissioner  
James Anzevino  
Michael Gonnelli  
Leonard R. Kaiser  
Arleen Walther

STAFF PRESENT:

Robert R. Ceberio, Executive Director  
Irfan Bora, Director of Finance & Management/  
Chief Financial Officer  
Thomas Marturano, Director of Natural Resources  
Sara Sundell, Assistant Director of Land Use Management  
Christine A. Sanz, Director of Legal Affairs/Chief Counsel  
Francisco Artigas, Director of MERI  
Christopher Gale, Director of Communications  
Christine Piatek, Deputy Attorney General  
Fred J. Dressel, HMMC  
Lynn Johnson, Executive Assistant

1. Pledge of Allegiance
2. Executive Director Ceberio read the Notice of Meeting required under the Sunshine Law.
3. Roll Call
4. REVIEW OF MINUTES  
  
Minutes of the July 25, 2007 meeting were moved by Commissioner Kaiser, seconded by Commissioner Gonnelli and unanimously carried.
5. SPECIAL PRESENTATION

Mr. Ceberio gave a presentation of the guidelines on housing

## 6. PUBLIC PARTICIPATION ON RESOLUTIONS

- Captain Bill Sheehan spoke on Resolution 07-78
- Hugh Carola, representative of the Fyke Nature Association spoke on Resolution 07-78
- Dr. Beth Ravit, Rutgers University Department of Environmental Science and Director of the Rutgers Environmental Research Clinic spoke on Resolution 07-78
- Amy Hansen, NJ Conservation Foundation spoke on Resolution 07-78.
- Greg Remaud, Land Conservation Director for NY/NJ Baykeeper and member of the Meadowlands Conservation Trust spoke on Resolution 07-78
- Michael Seyfried, Secaucus resident spoke on Resolution 07-78
- Susan Kraham, NJ Audubon spoke on Resolution 07-78.
- Carmen Pena, with Acorn organization spoke on Resolution 07-74
- Lenny Gomez, with Acorn organization spoke on Resolution 07-74
- Paul Bellan-Boyer, representing St. Matthews Lutheran Church in Jersey City, Jubilee Interfaith Organization and the NJ Regional Coalition spoke on Resolution 07-74.
- Paul Chrystie, Executive Director of the Coalition for Affordable Housing and the Environment spoke on Resolution 07-74.
- Richard Hoff, law firm of Flaster Greenberg on behalf of the NJ Builders Association spoke on Resolution 07-74
- Kevin Walsh, Fair Share Housing Center spoke on Resolution 07-74
- Sam Maffei, Secaucus resident spoke on Resolution 07-74 & 07-78
- Michael Guarino, spoke on Resolution 07-79, 07-84
- Don Evanson, Secaucus resident spoke on 07-74
- William Huisking spoke on Resolution 07-78

## 7. CONSENT AGENDA

Resolution No. 07-72 - Resolution issuing a Decision on the variance application submitted as part of file no. 07-222, Mack/Riverside Audi-Variance Block 155, Lot 4 in the Town of Secaucus.

Motion to adopt the resolution was made by Commissioner Stridick, seconded by Commissioner Walther. Resolution lacked a majority vote and was withdrawn.

Resolution No. 07-73 - Resolution issuing a Decision on the variance application submitted as part of file no. 07-221, Carlstadt Realty/Sunbelt Rentals, Inc. Variance Block 127, Lot 1 in the Borough of Carlstadt.

Motion to adopt the resolution was made by Commissioner Kaiser, seconded by Commissioner Gonnelli and carried with Commissioner Anzevino abstaining.

8. HOUSING

Resolution No. 07-74 - Resolution approving guidelines concerning Scarce Resource Restraints within the Hackensack Meadowlands District in accordance with the Appellate Division Decision in A-4174-03T3; a-3107-04T1.

Motion to adopt the resolution was made by Commissioner Stridick, seconded by Commissioner Anzevino and carried with Commissioner Gonnelli abstaining.

9. GIS SYSTEMS

Resolution No. 07-75 - Resolution to upgrade NJMC Geographical Information Software Systems

Motion to adopt the resolution was made by Commissioner Gonnelli, seconded by Commissioner Stridick and unanimously carried.

10. MEMORANDUM OF AGREEMENT

Resolution No. 07-76 - Resolution authorizing the Executive Director to enter into an MOU with Princeton University for a study concerning engineered soils and contaminant immobilization.

Motion to adopt the resolution was made by Commissioner Anzevino, seconded by Commissioner Kaiser and carried with Commissioner Gonnelli abstaining.

11. MEADOWFEST

Resolution No. 07-77 - Resolution to allocate funds for sponsorship at an annual Meadowlands Environmental Festival

Motion to adopt the resolution was made by Commissioner Gonnelli, seconded by Commissioner Stridick and carried with Commissioner Kaiser abstaining.

12. OPEN SPACE

Resolution No. 07-78 - Resolution authorizing the Executive Director to enter into an agreement with Allied outdoor Advertising, Inc. to purchase property in Secaucus.

Motion to adopt the resolution was made by Commissioner Anzevino, seconded by Commissioner Walther and carried with Commissioner Gonnelli abstaining.

13. CONSERVATION OFFICERS

Resolution No. 07-79 - Resolution regarding the deployment of NJDEP Conservation Officers in the Meadowlands.

Motion to adopt the resolution was made by Commissioner Gonnelli, seconded by Commissioner Stridick and unanimously carried.

14. TRANSPORTATION

Resolution No. 07-80 - Resolution for reallocation of funding for the preparation of the Meadowlands District Transportation Plan.

Motion to move the resolution was made by Commissioner Gonnelli, seconded by Commissioner Walther and unanimously carried.

15. FLOOD CONTROL

Resolution No. 07-81 - Resolution authorizing funding for the mitigation of drainage problems in the Township of North Bergen

Motion to move the resolution was made by Commissioner Kaiser, seconded by Commissioner Anzevino and unanimously carried.

16. REGULATIONS

Resolution No. 07-82 - Resolution authorizing staff to publish a Notice of Proposal and hold a Public Hearing to add language to NJMC Regulations.

Motion to move the resolution was made by Commissioner Stridick, seconded by Commissioner Gonnelli and unanimously carried.

17. BUILDING CODE

Resolution No. 07-83 - Resolution readopting the New Jersey Meadowlands Commission's Building Code at N.J.A.C. 19:6

Motion to move the resolution was made by Commissioner Anzevino, seconded by Commissioner Gonnelli and unanimously carried.

18. SPECIAL COUNSEL

Resolution No. 07-84 - Resolution authorizing continued funding of Special Counsel for property acquisition in the Meadowlands Golf Course Redevelopment Area.



Motion to move the resolution was made by Commissioner Stridick, seconded by Commissioner Gonnelli and unanimously carried.

19. REPORTS

Commissioner Kaiser - spoke about landfill operations in North Arlington.

Fred Dressel, HMMC Executive Director & Mayor of Moonachie - spoke about affordable housing.

20. PUBLIC PARTICIPATION

- Brian Kindergan
- Joanne DeGrossa, South Hackensack resident

21. CLOSED SESSION

The following issues were taken into consideration: EnCap and NYS&W.

Motion to enter into closed session was made by Commissioner Kaiser, seconded by Commissioner Gonnelli and unanimously carried.

Motion to enter into open session was made, seconded and unanimously carried.

Mr. Ceberio read the two resolutions into the record which were deliberated in closed session.

Resolution No. 07-86 - Resolution directing the Executive Director to enforce the terms of the Third Amended and Restated Landfill Closure and Development Agreement by and between EnCap Golf Holdings LLC, and the New Jersey Meadowlands Commission.

Resolution No. 07-87 - Resolution authorizing the Executive Director to appropriate \$500,000 for Special Counsel to be retained by the Office of the Attorney General for work associated with the EnCap Gold Redevelopment Agreement.

Motion to move the closed session resolutions was made by Commissioner Kaiser, seconded by Commissioner Anzevino and unanimously carried.

Motion to adjourn the meeting was made by Commissioner Stridick, seconded by Commissioner Gonnelli. Meeting adjourned.

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ROBERT R. CEBERIO, SECRETARY

RESOLUTION#	07-72	07-73	07-74	07-75	07-76	07-77	07-78	07-79	07-80
Asst. Comm. Stridick	Y	Y	Y	Y	Y	Y	Y	Y	Y
Comm. Anzevino	A	A	Y	Y	Y	Y	Y	Y	Y
Comm. Gonnelli	A	Y	A	Y	A	Y	A	Y	Y
Comm. Kaiser	A	Y	Y	Y	Y	A	Y	Y	Y
Comm. Macri	--	--	--	--	--	--	--	--	--
Comm. Nissley	Y	Y	Y	Y	Y	Y	Y	Y	Y
Comm. Walther	Y	Y	Y	Y	Y	Y	Y	Y	Y

RESOLUTION#	07-81	07-82	07-83	07-84	07-86	07-87
Asst. Comm. Stridick	Y	Y	Y	Y	Y	Y
Comm. Anzevino	Y	Y	Y	Y	Y	Y
Comm. Gonnelli	Y	Y	Y	Y	Y	Y
Comm. Kaiser	Y	Y	Y	Y	Y	Y
Comm. Macri	--	--	--	--	--	--
Comm. Nissley	Y	Y	Y	Y	Y	Y
Comm. Walther	Y	Y	Y	Y	Y	Y

Y = Yes      R = Recuse  
A = Abstain      N = No

**RESOLUTION TO AUTHORIZE THE EXECUTIVE DIRECTOR  
TO CREATE THE MEADOWLANDS  
BUSINESS DEVELOPMENT INCUBATOR**

**WHEREAS**, one of the recommendations of the NJMC's 2007 Economic Growth Report is to explore the feasibility of establishing a small business incubator in the Meadowlands; and

**WHEREAS**, this resolution will authorize the Executive Director to take the first steps towards the creation of the Meadowlands Business Development Incubator ("Incubator"); and

**WHEREAS**, the purpose of the Incubator is to create an environment that fosters the growth and development of small businesses and entrepreneurs in the Meadowlands District; and

**WHEREAS**, entrepreneurs with feasible projects will be selected and admitted into the business incubator where they will be offered a variety of support resources and services including provision of physical space; management coaching in conjunction with the Meadowlands Chamber of Commerce; help in preparation of business plans through administrative services, technical support, business networking and help with finding sources of financing. The Commission will also offer training and job assistance to women and minorities seeking employment in the Meadowlands District. The attached white paper on the Meadowlands Business Development Incubator further explains the various aspects of this initiative; and

**WHEREAS**, as a first step, the Commission intends to procure office space of approximately 12,000 sq. ft. at 160 Chubb Avenue in Lyndhurst. The Commission will also seek to recruit a dynamic individual to lead this effort and a search is currently under way; and

**WHEREAS**, the business incubator will follow best practices at an operational level by integrating its operation into wider (technology) development strategies, supported by a broadly based partnership, and managed in a business-like manner with the aim of maximizing the value of our investment; and

**WHEREAS**, the annual cost of operating the Meadowlands Business Development Incubator is estimated to be \$500,000.

**NOW THEREFORE BE IT RESOLVED** by the New Jersey Meadowlands Commission that the Executive Director is hereby authorized to appropriate \$500,000 per year for a 3-year period for the Meadowlands Business Development Incubator.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-88

# Memorandum

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## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Irfan A. Bora Date: October 24, 2007

Subject: Meadowlands Business Development Incubator

One of the recommendations of the NJMC's 2007 Economic Growth Report is to explore the feasibility of establishing a small business incubator in the Meadowlands. The attached resolution would authorize the Executive Director to take the first steps towards the creation of the Meadowlands Business Development Incubator ("Incubator"). The purpose of the Incubator is to create an environment that fosters the growth and development of small businesses and entrepreneurs in the Meadowlands District.

Entrepreneurs with feasible projects will be selected and admitted into the business incubator where they will be offered a variety of support resources and services including provision of physical space; management coaching in conjunction with the Meadowlands Chamber of Commerce; help in preparation of business plans through administrative services, technical support, business networking and help with finding sources of financing. The Commission will also offer training and job assistance to women and minorities seeking employment in the Meadowlands District. The attached white paper on the Meadowlands Business Development Incubator further enumerates the various aspects of this initiative.

As a first step, the Commission intends to procure office space of approximately 12,000 sq. ft. at 160 Chubb Avenue in Lyndhurst. The Commission will also seek to recruit a dynamic individual to lead this effort and a search is currently under way. It is our hope that the business incubator will follow best practices at an operational level by integrating its operation into wider (technology) development strategies, supported by a broadly based partnership, and managed in a business-like manner with the aim of maximizing the value of our investment.

The annual cost of operating the Meadowlands Business Development Incubator is estimated to be \$500,000 and this resolution will authorize the Commission to appropriate this sum each year for a 3-year period.

## **MEADOWLANDS BUSINESS DEVELOPMENT INCUBATOR**

### **OVERVIEW**

The Meadowlands Business Development Incubator ("Incubator") works to create an environment that fosters the growth and development of small businesses and entrepreneurs in the Meadowlands District. The Incubator will work to provide new businesses with a safety net advance their business, thereby furthering economic growth in the Meadowlands Region.

To do this, the New Jersey Meadowlands Commission (NJMC) will create a variety of partnerships with other state government entities, the Meadowlands Regional Chamber of Commerce, the Bergen and Hudson County Workforce Investment Boards and all local colleges/universities that are interested in participating in this initiative. The Incubator will work to locate small business entrepreneurs into the Meadowlands District by providing them with a low-cost short-term lease, technical support and training to aid the successful development of their business. The Incubator will provide participating businesses with the security and infrastructure they need to become a successful business.

### **MISSION**

To support and grow economic development in the Meadowlands Region by providing business and technical support to start-up small businesses and entrepreneurs.

### **ELIGIBILITY REQUIREMENTS**

The following is the proposed list of requirements that a company must meet to be eligible to participate in the Meadowlands Business Development Incubator Program. The proposed business must:

- Have been operating for less than 3 years.
- Be a "for-profit" enterprise.
- Be a New Jersey based company.
- Have a business plan.

### **SERVICES**

The following services are recommended to be provided to participants in the Incubator:

- Month-to-Month lease
- High Speed Internet Access
- Free Internet/Email Access
- Furnished Offices
- Networking Opportunities
- Monthly Workshops and Seminars topics including:
  - o Accounting
  - o Government Relations
  - o Human Resources
  - o Legal
  - o Marketing
  - o Strategic Planning
- Free Parking
- Link on NJMC and MRCC websites

- Shared Support Services:
  - o Telephone
  - o Color Copier/Printer
  - o Black & White Copier/Printer
  - o Faxes
  - o Mail Room
  - o Conference Room
  - o Receptionist/Clerical Support
- Security & Maintenance
- Membership into the Meadowlands Regional Chamber of Commerce
- NJMC and MRCC website listing of current job openings

### **APPLICATION**

A business may participate in this program for an initial period of 36 months, with the ability to apply for an extension of up to 24 months. The application will be available online, and the application submittal deadlines will be posted on the NJMC website. The application will consist of, but is not limited to the following questions:

#### **Sample Application:**

The following is an example of the items that the online application would include.

1. Contact Name
2. Company Name
3. Address
4. Phone
5. Fax
6. Email
7. Business Classification:
  - a. High-Technology
  - b. Innovation
  - c. Renewable Energy – Includes the manufacturing, distribution, marketing, installation, consultation, or engineering services as it relates to any of the Class 1 renewable energy technologies that are defined in the State's Renewable Portfolio Standard.
  - d. Financial Services -
  - e. Other: Description Required
8. Submission of a formal written business plan is required. Please attach the Company's business plan to this application. In addition, it is required that the applicant include an executive summary of their business plan. The executive summary must include the following information:
  - a. Current Number of Employees
  - b. Projected Number of Employees in 1 year, 2 years, and 5 years.
  - c. Description of Product/Service, Nature of Company Business
  - d. Market research and analysis: customers, market size, competition, market share.
  - e. Marketing plan: marketing strategy, pricing, sales tactics, promotion, distribution.
  - f. Management team: key personnel, Board, professional advisors, organization plan.

- g. How much revenue has been generated to date?
- h. How much private funding has been received to date?
- i. How much public funding has been received to date?
- 9. How much lease space are you seeking?
- 10. Do you anticipate your need for lease space expanding while a member of this Incubator? If so, please estimate the time and amount of the expected increase.
- 11. When did the business begin its operations? (Month, Year)
- 12. Is the business a “for-profit” or “non-profit” enterprise?

*Evaluation of Application:*

NJMC staff will evaluate the applications and select firms that meet the economic growth demands for the region. Initially, the Incubator will focus on getting businesses from the following industries to participate in this program:

- High Technology
- Innovation
- Renewable Energy
- Financial Services

In addition, there is a fifth category that businesses may select, entitled “other.” This category will enable the NJMC to select businesses that advance economic growth in the region, without being limited to the four industry categories listed above. The NJMC will work with the Meadowlands Workforce Development Consortium, and will use its annual Economic Conference and Economic Growth Report to reevaluate the industry categories that will be eligible for participation in the Incubator.

**EXTENSION**

After 30 months of participation in the program, a business must decide to file for an extension to the NJMC, or graduate from the program at the conclusion of their 36 month participation in the program. If a participating business decides to apply for an extension they must complete the following information:

- Length in months of the extension being requested.
- Submit an updated business plan.

In addition the NJMC must determine that the business is in compliance with the following:

- The Lease Agreement.
- Have a good relationship with other businesses participating in the Incubator.

**GRADUATION**

A company will successfully be graduated from the program if they meet one of the following criteria:

- The space requirements of the business exceed the Incubator’s space.
- The business has completed its term (3 years, or 4 to 5 years if an extension is applied for) in the program.



## **PARTNERS**

The NJMC should pursue partnerships with the following entities for support with the Incubator. The Incubator's success will be determined by how many different resources can be made readily available to the participants in this program. The following partners should work to provide training, education, staffing and financing to businesses that participate in this program.

### *State Government Entities*

The NJMC will work to serve as the liaison between the businesses that are participating in the Incubator, and representatives from across various State government commissions, departments, offices and authorities. The NJMC will work with the representatives from these various State government entities to provide links to government sponsored job training, grants and financing. The following is a list of some of the State government entities that the NJMC will invite to participate in this initiative. In addition, the NJMC will work with these entities, as well as the federal government to secure funding for this initiative.

- New Jersey Department of Labor
- New Jersey Office of Economic Growth
- New Jersey Commerce, Economic Growth and Tourism Commission
- New Jersey Economic Development Authority
- New Jersey Commission on Science and Technology
- Port Authority of New York and New Jersey

### *Meadowlands Regional Chamber of Commerce*

The Meadowlands Regional Chamber of Commerce will work with the Incubator to advertise the Incubator's activities, and help staff the businesses that are participating in the Incubator. In addition, the Chamber of Commerce will make available to the Incubator businesses all programs and services that are available to current members of the Chamber of Commerce.

### *Local Workforce Investment Boards*

The local Workforce Investment Boards (WIB) will work with the Incubator to advertise the Incubator's activities, and help staff the businesses that are participating in the Incubator. The local WIBs have representatives on the Meadowlands Workforce Development Consortium, and will thus work with the NJMC in developing the programs and services that will be available to businesses that participate in the Incubator. The local WIBs consist of the following:

- Bergen County WIB
- Hudson County WIB

### *Local Colleges and Universities*

All local colleges and universities will be approached to take a part in this initiative. More specifically, the local degree programs such as the MBA can provide the Incubator businesses with marketing strategies, business plans, and financial planning. Other degree programs and courses may provide participating businesses with technical assistance. These initiatives between the local colleges and universities will provide the participating businesses with a no cost way to receive consulting services, while providing students with an opportunity to apply

the classroom curriculum to real-world problems. Professors and other representatives of the college/university will be asked to provide some of the Workshops/Training seminars that are listed under “services” of this document.

Some of the local colleges and universities to be pursued include, but are not limited to the following:

- Bergen County
  - o Fairleigh Dickinson University
  - o Felician College
  - o Ramapo College
- Hudson County
  - o Hudson County Community College
  - o New Jersey City University
  - o Saint Peter’s College
  - o Stevens Institute of Technology
- Other Colleges in the Region
  - o Bloomfield College
  - o Caldwell College
  - o Essex County College
  - o Kean University
  - o Montclair State University
  - o New Jersey Institute of Technology
  - o Passaic County Community College
  - o Rutgers University
  - o Seton Hall University
  - o University of Medicine and Dentistry of New Jersey
  - o William Paterson University
- Local MBA Programs

### **OVERSIGHT**

NJMC staff will be responsible for all administration and oversight activities relating to the Incubator. The newly created Meadowlands Workforce Development Consortium will serve as an advisory capacity to the NJMC staff and the NJMC Board of Commissioners on the initiatives, strategies and implementation of the Incubator.

In addition, NJMC staff will conduct an annual review of the businesses that are participating in the Incubator program. This annual review of each of the participating businesses will analyze the following information:

- Adequacy of space to meet the needs of the Incubator’s businesses.
- The businesses’ need for Incubator services.
- The relationship between the Incubator’s businesses.
- The implementation and progress of the businesses’ Business Plan.

If the NJMC staff determines that a participating business is not fulfilling the mission of the Incubator, they can be terminated from the program with notice given 100 calendar days prior to the termination date. In the event that a business is issued a “Notice of Termination,” the business may appeal this notice to the NJMC Board of Commissioners. The Board of Commissioners will make the final determination in the matter.

**UNRESOLVED NEEDS**

The following is a list of items that need to be resolved to move forward with this program:

- Space for the Incubator: 160 Chubb Avenue, Lyndhurst, NJ
- Funding for the Incubator: NJMC will provide initial funding with some possible funding sources, which could include the colleges/universities, the State and Federal Government. The Port Authority of NY and NJ may also provide a funding stream for this project.
- Definitions of the 4 business classifications that are outlined under the Application section:
  - o High Technology
  - o Innovation
  - o Renewable Energy
  - o Financial Services
- Also, it needs to be determined whether or not these are the 4 industries that we want to focus our efforts to locate businesses in the Incubator.

**RESOLUTION ISSUING A DECISION ON THE VARIANCE APPLICATION  
SUBMITTED AS PART OF FILE NO. 07-222,  
MACK/RIVERSIDE AUDI-VARIANCE  
BLOCK 155, LOT 4, IN THE TOWN OF SECAUCUS**

**WHEREAS**, applications for one (1) use variance and one (1) bulk variance were filed with the New Jersey Meadowlands Commission ("NJMC") by Sean Rajan of Riverside Audi, for the premises identified as 850 Paterson Plank Road, Block 155, Lot 4, in the Town of Secaucus; and

**WHEREAS**, the variances are sought in connection with the applicant's proposal to operate a 8,713 square foot automobile sales facility within the building on the subject premises; and

**WHEREAS**, the applicant has requested variance relief from N.J.A.C. 19:4-5.52(a) which does not list automobile sales facilities as a permitted use in the Regional Commercial zone. The applicant is proposing to operate an 8,713 square foot automobile sales area within the building on the subject premises; and

**WHEREAS**, the applicant has also requested variance relief from N.J.A.C. 19:4-8.4(a) which requires a minimum of 65 parking spaces on the site based on the proposed uses on the premises. The applicant is proposing 40 parking spaces; and

**WHEREAS**, notice of the requested variance relief was given to the public and all interested parties as required by law and was published in The Secaucus Home News, The Jersey Journal and The Star Ledger; and

**WHEREAS**, a public hearing was held in the Office of the NJMC on June 5, 2007, before Sharon Mascaró, Chief Engineer, and Brandon Alviano, Staff Planner; and

**WHEREAS**, a comprehensive report dated August 15, 2007, has been prepared indicating the recommendations of the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director in this matter; and

**WHEREAS**, the report recommends approval of the use variance request to operate an 8,713 square foot automobile sales area within the building on the subject premises; and

**WHEREAS**, the report also recommends approval of the bulk variance request to permit 40 parking spaces on the subject premises whereas 65 parking spaces are required; and

**WHEREAS**, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and Chief of Regulatory Affairs and by the Executive Director, and the submissions of the applicant; and

**WHEREAS**, the members of the NJMC concur with the recommendations of the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director; and

**WHEREAS**, the NJMC hereby determines that the requested variance to permit an 8,713 square foot automobile sales area within the building and on the subject premises conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby determines that the requested variance to permit 40 parking spaces on the subject premises whereas 65 parking spaces are required conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the Mack/Riverside Audi Variance application for one use variance request to permit an automobile sales facility on the subject premises, is hereby **APPROVED WITH THE FOLLOWING CONDITIONS** for the reasons set forth in the August 15, 2007 recommendation:

1. A maximum of 8,713 square feet of the interior of the building can be utilized as an automobile sales facility. Expansion of the automobile sales area on the site to more than 8,713 square feet shall not be permitted.
2. No repair, maintenance or showroom preparation of automobiles shall be permitted on this site.

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the Mack/Riverside Audi Variance application for one bulk variance to permit 40 parking spaces on the subject premises whereas 65 parking spaces are required, is hereby **APPROVED** for the reasons set forth in the August 15, 2007 recommendation.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

---

Robert R. Ceberio  
Secretary

Resolution No. 07-89

# Memorandum

P. 19

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Ileana Kafrouni Date: October 24, 2007

Subject: Variance Recomm. Mack/Riverside Audi-Variance (File 07-222)

Applications for one (1) use variance and one (1) bulk variance were filed with the New Jersey Meadowlands Commission by Sean Rajan of Riverside Audi, for the premises identified as 850 Paterson Plank Road, Block 155, Lot 4, in the Town of Secaucus, New Jersey. Said premises are located in the Commission's Regional Commercial zone. The variances are sought in connection with the applicant's proposal to establish an automobile sales facility at the subject premises.

The applicant has requested variance relief from N.J.A.C. 19:4-5.52(a) which does not list automobile sales facilities as a permitted use in the Regional Commercial zone. The applicant is proposing to operate an 8,713 square foot automobile sales area within the building on the subject premises. The applicant has also requested variance relief from N.J.A.C. 19:4-8.4(a) which requires a minimum of 65 parking spaces on the site based on the proposed uses on the premises. The applicant is proposing 40 parking spaces. A public hearing on this matter was held in the Office of the NJMC on June 5, 2007.

In a comprehensive report dated August 15, 2007 the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director recommended conditional approval of the use variance and bulk variance requests in connection with the applicant's proposal to operate an automobile sales facility on the subject premises.

At this time, the Commission is required to issue a decision on the variance application described above. A resolution requesting the same is attached for your consideration.

**RESOLUTION ISSUING A DECISION ON THE VARIANCE APPLICATION  
SUBMITTED AS PART OF FILE NO. 05-671,  
ABBEY/AG HOLDING - NEW BUILDING  
BLOCK 61, LOT 3, IN THE BOROUGH OF MOONACHIE**

**WHEREAS**, applications for four (4) bulk variances were filed with the New Jersey Meadowlands Commission (NJMC) by Mr. Gary Zalarick, on behalf of AG Holding, for the premises identified as 70 Commercial Avenue, Block 61, Lot 3, in the Borough of Moonachie, New Jersey; and

**WHEREAS**, the variances are sought in connection with the applicant's proposal to construct a new multi-tenant warehouse facility with accessory office space measuring approximately 10,450 square feet at the subject property, which is located in the Light Industrial B zone; and

**WHEREAS**, the applicant requested relief from N.J.A.C. 19:4-5.84(a)3i, which requires a minimum front yard setback of 35 feet within the Light Industrial B zone, whereas a front yard setback of 22.25 feet along West Commercial Avenue is proposed; and

**WHEREAS**, the applicant also requested relief from N.J.A.C. 19:4-5.84(a)3i, which requires a minimum front yard setback of 35 feet within the Light Industrial B zone, whereas a front yard setback of 20.25 feet along Commercial Avenue is proposed; and

**WHEREAS**, the applicant also requested relief from N.J.A.C. 19:4-8.4(a) Table 8-1 #75, which requires two loading facilities measuring 12 feet by 60 feet each for structures up to and including 40,000 square feet, whereas one loading facility is proposed for the structure; and

**WHEREAS**, the applicant also requested relief from N.J.A.C. 19:4-8.3(b)1, which does not permit loading in any front yard, whereas the applicant is proposing to provide one loading area within the front yard setback along Commercial Avenue; and

**WHEREAS**, notice of the requested variance relief was given to the public and all interested parties as required by law and was published in The Leader Free Press and The Record newspapers; and

**WHEREAS**, a public hearing was held in the Office of the NJMC on May 8, 2007, before Sharon Mascaró, Chief Engineer, Mia Petrou, Senior Planner, and Sharon Escoriaza, Staff Engineer; and



**WHEREAS**, a comprehensive report dated August 31, 2007, has been prepared indicating the recommendations of the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director in this matter; and

**WHEREAS**, the report recommends approval of the bulk variance request to provide a minimum front yard setback of 22.25 feet along West Commercial Avenue; and

**WHEREAS**, the report also recommends approval of the bulk variance request to provide a minimum front yard setback of 20.25 feet along Commercial Avenue; and

**WHEREAS**, the report also recommends approval of the bulk variance request to provide one 12 feet by 60 feet loading facility instead of two; and

**WHEREAS**, the report also recommends denial of the bulk variance request to permit loading within the front yard setback along Commercial Avenue; and

**WHEREAS**, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and Chief of Regulatory Affairs and by the Executive Director, and the submissions of the applicant; and

**WHEREAS**, the members of the NJMC concur with the recommendations of the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director; and

**WHEREAS**, the NJMC hereby determines that the requested variance to provide a minimum front yard setback of 22.25 feet along West Commercial Avenue conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby further determines that the requested variance to provide a minimum front yard setback of 20.25 feet along Commercial Avenue conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby further determines that the requested variance to provide one 12 feet by 60 feet loading facility instead of two conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby further determines that the requested variance to permit loading within the front yard setback along Commercial Avenue does not conform with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e);

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the Abbey/AG Holding New Building variance application for one bulk variance request to provide a minimum front yard setback of 22.25 feet along West Commercial Avenue is hereby **APPROVED** for the reasons set forth in the August 31, 2007 recommendation; and

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the Abbey/AG Holding New Building variance application for one bulk variance request to provide a minimum front yard setback of 20.25 feet along Commercial Avenue is hereby **APPROVED** for the reasons set forth in the August 31, 2007 recommendation; and

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the Abbey/AG Holding New Building variance application for one bulk variance request to provide one 12 feet by 60 feet loading facility instead of two is hereby **APPROVED** for the reasons set forth in the August 31, 2007 recommendation; and

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the Abbey/AG Holding New Building variance application for one bulk variance request to permit loading within the front yard setback along Commercial Avenue is hereby **DENIED** for the reasons set forth in the August 31, 2007 recommendation.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

---

Robert R. Ceberio  
Secretary

# Memorandum

P. 23

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert Ceberio, Executive Director

From: Ileana Kafrouni Date: October 24, 2007

Subject: Variance Recommendation - Abbey/AG Holding - New Building (File 05-671)

Applications for four (4) bulk variances were filed with the New Jersey Meadowlands Commission (NJMC) by Mr. Gary Zalarick, on behalf of AG Holding, for the premises identified as 70 Commercial Avenue, Block 61, Lot 3, in the Borough of Moonachie, New Jersey. Said premises are located in the Commission's Light Industrial B zone.

The bulk variances are sought in connection with the applicant's proposal to construct a new multi-tenant warehouse facility with accessory office space measuring approximately 10,450 square feet.

The applicant requested variance relief from the following:

1. N.J.A.C. 19:4-5.84(a)3i, which requires a minimum front yard setback of 35 feet within the Light Industrial B zone. The proposed building provides a front yard setback of 22.25 feet along West Commercial Avenue.
2. N.J.A.C. 19:4-5.84(a)3i, which requires a minimum front yard setback of 35 feet within the Light Industrial B zone. The proposed building provides a front yard setback of 20.25 feet along Commercial Avenue.
3. N.J.A.C. 19:4-8.4(a) Table 8-1 #75, which requires two loading facilities measuring 12 feet by 60 feet each for structures up to and including 40,000 square feet. One 12 feet by 60 feet loading area is proposed for the structure.
4. N.J.A.C. 19:4-8.3(b)1, which does not permit loading in any front yard. The applicant is proposing to provide one loading area within the front yard setback along Commercial Avenue.

A public hearing on this matter was held in the Office of the NJMC on May 8, 2007.

In a comprehensive report dated August 31, 2007, the Director of Land Use Management and Chief of Regulatory Affairs and the Executive Director recommended approval of three bulk variance requests (items number 1, 2, and 3 above) and denial of one bulk variance request (item number 4 above).

In a letter dated October 4, 2007, the applicant accepted the NJMC staff's variance recommendations in the report.

At this time, the Commission is required to issue a decision on the variance application described above. A resolution requesting the same is attached for your consideration.

**ACCEPTANCE OF AUDITS OF LANDFILL  
CLOSURE FUNDS**

**BE IT RESOLVED** that the Reports of Audits prepared by Ferraioli, Wielkottz, Cerullo & Cuva, for the New Jersey Meadowlands Commission's Solid Waste Baler Facility Escrow Account and Alternative Funds Landfill Closure Escrow Account dated September 30, 2007 are hereby accepted.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-91

# Memorandum

P. 25

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Irfan A. Bora and E. H. Bulmer Date: October 24, 2007

Subject: Adoption of Department of Environmental Protection Escrow Audits

We are pleased to submit the following annual audits of the NJMC/DEP escrow accounts dated September 30, 2007, prepared by Ferraioli, Wielkatz, Cerullo & Cuva, for your review and acceptance:

1. NJMC Solid Waste Baler Facility Escrow Account
2. Alternative Funds Landfill Closure Escrow Account

We are pleased to report that the Commission has received an unqualified (clean) opinion on each of the escrow audits. As part of the DEP's requirement, copies of the audit reports have been forwarded to the Department for its review and acceptance.

We would like to compliment the accounting staff for their work on these escrow accounts.

If you have any questions, please do not hesitate to call us.

attachment

**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
ALTERNATIVE FUNDS LANDFILL  
CLOSURE ESCROW ACCOUNT  
FOR THE PERIOD  
OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**

**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
ALTERNATIVE FUNDS LANDFILL  
CLOSURE ESCROW ACCOUNT**

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## **Ferraioli, Wielkotz, Cerullo & Cuva, P.A.**

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Steven D. Wielkotz, CPA, RMA  
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Earl L. Snook, RMA

### **INDEPENDENT AUDITOR'S REPORT**

The Board of Commissioners  
New Jersey Meadowlands Commission

We have audited the Statement of Assets, Liabilities and Fund Balances and the Statement of Revenues, Expenditures and Changes in Fund Balance - Cash Basis of the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account for the fiscal year ended September 30, 2007. These Financial Statements are the responsibility of the management of the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account. Our responsibility is to express an opinion on the Financial Statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the Audit Requirements of the Sanitary Landfill Closure and Contingency Fund Act of 1981 (amended 1987). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether these Financial Statements are free of material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in these Financial Statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of these Financial Statements. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 2, these financial statements were prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. Also as described in Note 3, investments are recorded at cost rather than market value which differs from accounting principles generally accepted in the United States of America.

In previous years, the State of New Jersey Department of Environmental Protection did not require an audit of this particular Landfill Closure Escrow Account.

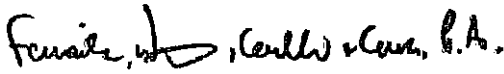




In our opinion, the Financial Statements referred to above present fairly, in all material respects, the financial position of the New Jersey Meadowlands Commission Alter Landfill Closure Escrow Fund at September 30, 2007 and the results of operations of such fund for the fiscal year ended, on the basis of accounting as described in Note 2 and the Requirements of the Sanitary Landfill Closure and Contingency Act of 1981 (Amended 1987).



Steven D. Wielkotz, C.P.A.  
Registered Municipal Accountant  
No. CROO413



FERRAIOLI, WIELKOTZ, CERULLO, & CUVA, P.A.  
Certified Public Accountants

Pompton Lakes, New Jersey

October 11, 2007

## **Ferraioli, Wielkotz, Cerullo & Cuva, P.A.**

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Earl L. Snook, RMA

### **INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE**

The Board of Commissioners  
New Jersey Meadowlands Commission

Gentlemen:

We have audited the Statement of Assets, Liabilities and Fund Balance and the Statement of Revenues and Expenditures and Changes in Fund Balance - Cash Basis of the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account as of and for the year ended September 30, 2007, and have issued our report thereon dated October 11, 2007.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the audit requirements of the Sanitary Landfill Facility Closure and Contingency Fund Act of 1981 (amended 1987). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether these financial statements are free of material misstatement.

Compliance with laws and regulations applicable to the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account is the responsibility of the New Jersey Meadowlands Commission management. As part of obtaining reasonable assurance about whether these financial statements are free of material misstatement, we performed tests of the Commission's compliance with certain provisions of laws and regulations. However, our objective was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests of compliance indicate that, with respect to the items tested, the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account complied in all material respects, with the provisions referred to in the third paragraph of this report; and with respect to the items not tested, nothing came to our attention that caused us to believe that the Commission had not complied, in all material respects with those provisions.



The report is intended solely for the information of the Board of Commissioners, Management and the Department of Environmental Protection State of New Jersey, Bureau of Solid Waste Regulation. This restriction is not intended to limit distribution of this report, which is a matter of public record.



Steven D. Wielkotz, C.P.A.  
Registered Municipal Accountant  
No. CROO413



FERRAIOLI, WIELKOTZ, CERULLO & CUVA, P.A.  
Certified Public Accountants

Pompton Lakes, New Jersey

October 11, 2007

NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
ALTERNATIVE FUNDS LANDFILL  
CLOSURE ESCROW ACCOUNT

STATEMENT OF ASSETS, LIABILITIES, AND FUND BALANCE  
SEPTEMBER 30, 2007

ASSETS

Cash and Cash Equivalents	<u>\$1,628,076.73</u>
	<u>\$1,628,076.73</u>

LIABILITY AND FUND BALANCE

Fund Balance	<u>\$1,628,076.73</u>
	<u>\$1,628,076.73</u>

See accompanying notes to financial statements.

NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
ALTERNATIVE FUNDS LANDFILL  
CLOSURE ESCROW ACCOUNT

STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE  
FOR THE PERIOD OCTOBER 1, 2006 TO SEPTEMBER 30, 2007

<u>Month</u>	Income on Invested <u>Funds</u>	<u>Total</u>
October, 2006	\$13,333.97	\$13,333.97
November, 2006	9,397.55	9,397.55
December, 2006	5,075.77	5,075.77
January, 2007	1,461.89	1,461.89
February, 2007	37.50	37.50
March, 2007	32.33	32.33
April, 2007	34.07	34.07
May, 2007	31.21	31.21
June, 2007	39,167.77	39,167.77
July, 2007	4,917.16	4,917.16
August, 2007	6,364.45	6,364.45
September, 2007	6,137.95	6,137.95
	<u>\$85,991.62</u>	85,991.62
Unrealized Loss on Sale of Investments		(2,832.54)
Less: Trustee Fees		<u>(5,591.39)</u>
Net Increase in Fund Balance		77,567.69
Fund Balance, Beginning of Period		<u>1,550,509.04</u>
Fund Balance, End of Period		<u>\$1,628,076.73</u>
Financial Institution(s):		
Commerce Bank		
#CWA6201574		

## NOTES TO FINANCIAL STATEMENTS

**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
ALTERNATIVE FUNDS LANDFILL  
CLOSURE ESCROW ACCOUNT  
FOR THE PERIOD OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account has been established by the New Jersey Meadowlands Commission in June 2001. A portion of the funds received for solid and liquid wastes accepted for disposal thru 2005 were deposited to the fund in order to have funds available for the cost of future closure and postclosure of orphan landfills within the Meadowlands District. No withdrawals therefore may be made without written approval by the New Jersey State Department of Environmental Protection.

**NOTE 2: BASIS OF ACCOUNTING**

The financial statements of the New Jersey Meadowlands Commission Alternative Funds Landfill Closure Escrow Account have been prepared on the cash basis of accounting; consequently certain revenues recognized when received rather than when earned, and certain expenses are recognized when cash is disbursed rather than when the obligation is incurred.

The Fund is considered part of the Commission and does not include all of the operations of the Commission. Accordingly, the accompanying financial statements report only that portion of the Commission that deals with the Fund.

**NOTE 3: CASH, CASH EQUIVALENTS AND INVESTMENTS**

**Cash**

**Custodial Credit Risk - Deposits**

Custodial credit risk is the risk that in the event of a bank failure, the government's deposits may not be returned to it. The Commission's policy is based on New Jersey Statutes requiring cash be deposited only in New Jersey based banking institutions that participate in New Jersey Governmental Depository Protection Act (GUDPA) or in qualified investments established in New Jersey Statutes that are treated as cash equivalents. As of June 30, 2007, \$0 of the Commission's bank balance of \$1,628,076.73 was exposed to custodial credit risk.

**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
LANDFILL CLOSURE ESCROW FUND  
SOLID WASTE BALING FACILITY  
FOR THE PERIOD  
OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**



**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
LANDFILL CLOSURE ESCROW FUND  
SOLID WASTE BALING FACILITY**

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Earl L. Snook, RMA

### **INDEPENDENT AUDITOR'S REPORT**

The Board of Commissioners  
 New Jersey Meadowlands Commission


We have audited the Statement of Assets, Liabilities and Fund Balances and the Statement of Revenues, Expenditures and Changes in Fund Balance - Cash Basis of the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility for the fiscal year ended September 30, 2007. These Financial Statements are the responsibility of the management of the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility. Our responsibility is to express an opinion on the Financial Statements based on our audit.

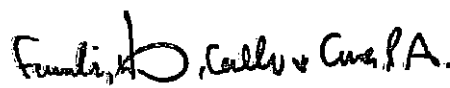
We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the Audit Requirements of the Sanitary Landfill Closure and Contingency Fund Act of 1981 (amended 1987). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether these Financial Statements are free of material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in these Financial Statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of these Financial Statements. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 2, these financial statements were prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. Also as described in Note 3, investments are recorded at cost rather than market value which differs from accounting principles generally accepted in the United States of America.



In our opinion, the Financial Statements referred to above present fairly, in all material respects, the financial position of the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility at September 30, 2007 and the results of operations of such fund for the fiscal year ended, on the basis of accounting as described in Note 2 and the Requirements of the Sanitary Landfill Closure and Contingency Act of 1981 (Amended 1987).

  
Steven D. Wielkötz, C.P.A.  
Registered Municipal Accountant  
No. CROO413

  
FERRAIOLI, WIELKOTZ, CERULLO, & CUVA, P.A.  
Certified Public Accountants

Pompton Lakes, New Jersey

October 11, 2007

## **Ferraioli, Wielkotz, Cerullo & Cuva, P.A.**

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Earl L. Snook, RMA

### **INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE**

The Board of Commissioners  
New Jersey Meadowlands Commission

Gentlemen:

We have audited the Statement of Assets, Liabilities and Fund Balance and the Statement of Revenues and Expenditures and Changes in Fund Balance - Cash Basis of the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility as of and for the year ended September 30, 2007, and have issued our report thereon dated October 11, 2007.

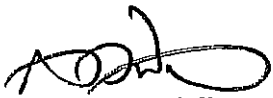
We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the audit requirements of the Sanitary Landfill Facility Closure and Contingency Fund Act of 1981 (amended 1987). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether these financial statements are free of material misstatement.

Compliance with laws and regulations applicable to the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility is the responsibility of the New Jersey Meadowlands Commission management. As part of obtaining reasonable assurance about whether these financial statements are free of material misstatement, we performed tests of the Commission's compliance with certain provisions of laws and regulations. However, our objective was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests of compliance indicate that, with respect to the items tested, the New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility complied in all material respects, with the provisions referred to in the third paragraph of this report; and with respect to the items not tested, nothing came to our attention that caused us to believe that the Commission had not complied, in all material respects with those provisions.



The report is intended solely for the information of the Board of Commissioners, Management and the Department of Environmental Protection State of New Jersey, Bureau of Solid Waste Regulation. This restriction is not intended to limit distribution of this report, which is a matter of public record.



Steven D. Wielkottz, C.P.A.  
Registered Municipal Accountant  
No. CROO413



FERRAIOLI, WIELKOTZ, CERULLO & CUVA, P.A.  
Certified Public Accountants

Pompton Lakes, New Jersey

October 11, 2007

NEW JERSEY MEADOWLANDS COMMISSION  
 (A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
 LANDFILL CLOSURE ESCROW FUND  
 SOLID WASTE BALING FUND

STATEMENT OF ASSETS, LIABILITIES, AND FUND BALANCE  
 SEPTEMBER 30, 2007

ASSETS

Cash and Cash Equivalents	\$37,810.41
Investments, at cost	952,906.50
	<hr/> 990,716.91
Accounts receivable	23,195.00
	<hr/> \$1,013,911.91
	<hr/>

LIABILITY AND FUND BALANCE

Liability - Due to General Operating Fund	498.00
Fund Balance	1,013,413.91
	<hr/>
	\$1,013,911.91
	<hr/>

See accompanying notes to financial statements.

NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
LANDFILL CLOSURE ESCROW FUND  
SOLID WASTE BALING FUND

STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE

FOR THE PERIOD OCTOBER 1, 2006 TO SEPTEMBER 30, 2007

Month	Number of Tons Accepted	Date of Deposit	Dollars Deposited	Income on Invested Funds	Total
October, 2006	18,667	11/17/06	\$18,667.00	\$3,639.80	\$22,306.80
November, 2006	13,148	12/19/06	13,148.00	3,840.77	16,988.77
December, 2006	16,429	1/17/07	16,429.00	1,553.40	17,982.40
January, 2007	15,070	2/16/07	15,070.00	6,808.43	21,878.43
February, 2007	5,588	3/16/07	5,588.00	2,078.98	7,666.98
March, 2007	12,107	4/19/07	12,107.00	6,421.08	18,528.08
April, 2007	13,815	5/21/07	13,815.00	4,442.47	18,257.47
May, 2007	25,543	6/18/07	25,543.00	4,658.92	30,201.92
June, 2007	26,461	7/18/07	26,461.00	2,746.16	29,207.16
July, 2007	28,622	8/17/07	28,622.00	4,386.88	33,008.88
August, 2007	33,104	9/10/07	33,104.00	2,616.04	35,720.04
September, 2007	23,195	10/16/07	23,195.00	6,607.34	29,802.34
			<u>\$231,749.00</u>	<u>\$49,800.27</u>	<u>281,549.27</u>
Realized Gain on Sale of Investments					258.57
Unrealized Gain/(Loss) on Ending Market Value of Investments					(5,639.88)
Less: Trustee Fees Withdrawals					(5,201.89)
					<u>(300,233.00)</u>
Net Increase/(Decrease) in Fund Balance					(29,266.93)
Fund Balance, Beginning of Period					<u>1,042,680.84</u>
Fund Balance, End of Period					<u>\$1,013,413.91</u>
Financial Institution(s): Bank of America #51-16-200-8559054					

## NOTES TO FINANCIAL STATEMENTS



**NEW JERSEY MEADOWLANDS COMMISSION  
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)  
LANDFILL CLOSURE ESCROW FUND  
SOLID WASTE BALING FACILITY  
NOTES TO FINANCIAL STATEMENTS  
FOR THE PERIOD OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The New Jersey Meadowlands Commission Landfill Closure Escrow Fund Solid Waste Baling Facility has been established by the New Jersey Meadowlands Commission in January 1982, in compliance with New Jersey Public Law 1981, C. 306, the Sanitary Landfill Closure and Contingency Fund Act. A portion of the funds received for solid and liquid wastes accepted for disposal during the year are deposited to the fund in order to have funds available for the cost of future closure of the landfill. No withdrawals therefore may be made without written approval by the New Jersey State Department of Environmental Protection.

In December 1997, this site stopped accepting household solid waste and is currently accepting nonprocessible waste. The Fund continues to operate to account for the interest earned on the funds on deposit and the closure expenditures.

**NOTE 2: BASIS OF ACCOUNTING**

The financial statements of the New Jersey Meadowlands Commission Landfill Closure Escrow Account have been prepared on the cash basis of accounting; consequently certain revenues recognized when received rather than when earned, and certain expenses are recognized when cash is disbursed rather than when the obligation is incurred.

The Fund is considered part of the Commission and does not include all of the operations of the Commission. Accordingly, the accompanying financial statements report only that portion of the Commission that deals with the Fund.

**NOTE 3: CASH, CASH EQUIVALENTS AND INVESTMENTS**

**Cash**

**Custodial Credit Risk - Deposits**

Custodial credit risk is the risk that in the event of a bank failure, the government's deposits may not be returned to it. The Commission's policy is based on New Jersey Statutes requiring cash be deposited only in New Jersey based banking institutions that participate in New Jersey Governmental Depository Protection Act (GUDPA) or in qualified investments established in New Jersey Statutes that are treated as cash equivalents. As of June 30, 2007, \$0 of the Commission's bank balance of \$37,810.41 was exposed to custodial credit risk.

**NEW JERSEY MEADOWLANDS COMMISSION**  
**(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)**  
**LANDFILL CLOSURE ESCROW FUND**  
**SOLID WASTE BALING FACILITY**  
**NOTES TO FINANCIAL STATEMENTS**  
**FOR THE PERIOD OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**

**NOTE 3: CASH, CASH EQUIVALENTS AND INVESTMENTS, (continued)**

**Investments**

As of September 30, 2007, the Commission had the following investments and maturities:

Investment Type	Fair Value	<u>Investment Maturities (in Years)</u>		
		<u>Less Than 1</u>	<u>1-5</u>	<u>6-10</u>
Federal Home Loan Banks	\$451,211.00	\$225,820.25	\$175,687.75	\$49,703.00
Federal Farm Credit Banks	49,765.50		49,765.50	
U.S. Treasury Notes	99,883.00		50,027.50	49,855.50
Federal National Mortgage Association	252,172.00		152,734.50	99,437.50
Federal Home Loan Mortgage Corp.	<u>99,875.00</u>	<u>                    </u>	<u>                    </u>	<u>99,875.00</u>
Total	<u>\$952,906.50</u>	<u>\$225,820.25</u>	<u>\$428,215.25</u>	<u>\$298,871.00</u>

**Investment Rate Risk**

The Commission does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

**Credit Risk**

New Jersey Statutes limits investments to those specified in the Statutes. The type of allowance investments are Bonds of the United States of America; obligations of federal agencies; government money market mutual funds; the State of New Jersey Cash Management Plan; local government investment pools; or repurchase of fully collateralized securities.

**Concentration of Credit Risk**

The Commission places no limit on the amount the Commission may invest in any one issuer.

**NOTE 4: DEPOSITS TO ESCROW FUND**

Deposits to the escrow fund are required to be made on or before the 20<sup>th</sup> day of the month following their receipt.

**RESOLUTION ISSUING A DECISION ON THE SUITABILITY OF THE  
HAWK PROPERTY FOR RESIDENTIAL DEVELOPMENT**

**WHEREAS**, on September 19, 2007, the Commission adopted Resolution No. 07-78, which authorized the NJMC's purchase of the 35.1-acre Hawk Realty property located on Block 5, Lots 4, 4.01 and 6, in the Town of Secaucus, and required the preparation of a site suitability study to determine whether or not the subject property is suitable for affordable housing; and

**WHEREAS**, a Site Suitability Study dated October 18, 2007, attached hereto and made part of this resolution, has been prepared indicating the recommendations of the NJMC staff in this matter; and

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the NJMC adopts the findings of staff's report that the subject property located at Block 5, Lots 4, 4.01 and 6 is unsuitable for residential development.

The foregoing was adopted on Commission vote.

---

Charles A. Richman  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of October 24, 2007.

---

Robert R. Ceberio  
Secretary

Resolution No. 07-92

# Memorandum

P. 48

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Ileana Kafrouni Date: October 24, 2007

Subject: Hawk Site Suitability Study

On September 19, 2007, the Commission passed Resolution 07-78, which authorized the NJMC's purchase of the 35-acre Hawk Realty property at Block 5, Lots 4, 4.01, and 6 in Secaucus, New Jersey. Resolution 07-78 also required the preparation of a site suitability study to determine whether or not the Hawk Realty property is suitable for the construction of affordable housing.

NJMC staff has prepared the site suitability study as per the criteria established by the Council on Affordable Housing (COAH) at N.J.A.C. 5:94-1.4 and 4.5 and the *Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission*, adopted by the NJMC on September 19, 2007.

In the Site Suitability Study, dated October 18, 2007, Staff recommended that the NJMC determine that the Hawk Realty property is unsuitable for residential development, including affordable housing.

At this time, the Commission is required to issue a decision concerning the suitability of the Hawk Realty property for residential development, including affordable housing. A resolution requesting the same is attached for your consideration.

**Site Suitability Study  
Block 5, Lots 4, 4.01 and 6  
Town of Secaucus, New Jersey  
Owner: Hawk Realty**

**Prepared by the New Jersey Meadowlands Commission**

**October 19, 2007**



**New Jersey  
Meadowlands Commission**

**Site Suitability Study**  
**Block 5, Lots 4, 4.01 and 6**  
**Town of Secaucus, New Jersey**  
**Owner: Hawk Realty**

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### **III. COAH's Site Suitability Criteria and NJMC's Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission**

- A. State Development and Redevelopment Plan (SDRP)
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- C. Environmental Hazards
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- E. Category One (C1) Waterway Constraints
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- G. High Marsh Habitat
- H. Steep Slope Constraints
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- K. Consistency with NJMC Master Plan

### **IV. Conclusion**

## **List of Attachments**

- A. NJMC Resolution No. 07-78, dated September 19, 2007
- B. *Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission (Guidelines)*, adopted by the NJMC on September 19, 2007
- C. Location Map of Subject Property / Aerial Photograph
- D. Aerial photograph of Hawk Property Wetlands
- E. Letter dated April 7, 2004 from the NJMC to Kevin Coakley



## I. Introduction

### A. Purpose of the Study

This site suitability study has been prepared as required by Resolution 07-78, which was approved by the New Jersey Meadowlands Commission's (NJMC) Board of Commissioners on September 19, 2007. Resolution No. 07-78 (**Attachment A**) authorized the NJMC's purchase of the 35.1-acre Hawk Realty property located on Block 5, Lots 4, 4.01 and 6, in the Town of Secaucus, New Jersey and required the preparation of a site suitability study to determine whether or not the subject property is suitable for affordable housing. The recommendations in this study will be forwarded to the NJMC Board of Commissioners for final action.

### B. COAH Site Suitability Criteria

In order to make a determination regarding site suitability, the characteristics of the Hawk property must be evaluated against criteria established by the Council on Affordable Housing (COAH) at N.J.A.C. 5:94-1.4 and 4.5 and the *Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission (Guidelines)*, adopted by the NJMC on September 19, 2007 (**Attachment B**). As defined by COAH at N.J.A.C. 5:94-1.4:

"Suitable site" means a site that has clear title and is free of encumbrances which preclude development of affordable housing; is adjacent to compatible land uses; has access to appropriate streets, water and sewer infrastructure; can be developed consistent with the Residential Site Improvement Standards and the rules or regulations of all agencies with jurisdiction over the site; is consistent with the Memorandum of Understanding (Appendix D) with the State Planning Commission; and is consistent with the site suitability criteria delineated in N.J.A.C. 5:94-4.5. A site may be deemed suitable although not currently zoned for affordable housing.

COAH's site suitability criteria for new construction are as follows:

(a) Except as exempted in N.J.A.C. 5:94-4.4(a)1, sites zoned to produce affordable housing shall conform to the following criteria to determine site suitability:

1. Sites that are located in Planning Areas 1 or 2 or located within a designated center shall have a presumption of validity regarding consistency with the State Development and Redevelopment Plan. These sites are the preferred location for a municipality to address its growth share obligation.
2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center shall have the burden of demonstrating to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council shall obtain a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.
3. Within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Division of Coastal Resources of the NJDEP and the New Jersey Meadowlands Commission, the Council shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act and the regulations promulgated thereunder; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Resource and Development Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:4.



4. The portions of sites slated for construction adhere to regulations concerning wetland constraints as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or NJDEP, whichever agency has jurisdiction; Category One waterway constraints pursuant to N.J.S.A. 58:11A-1 et seq. and the rules promulgated thereunder, N.J.A.C. 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.

5. Historic and architecturally important sites and districts listed on the State or National Register of Historic Places shall be reviewed by the New Jersey Historic Preservation Office for a recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. The review and written recommendation by the New Jersey Historic Preservation Office shall be included in the Housing Element and Fair Share Plan that is the subject of any petition before the Council. Within historic districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

6. The Council shall consider the availability of infrastructure and vacant developable land when determining site suitability.

### **C. Emergency Restraints upon Further Development in the Meadowlands District**

In a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court directed the NJMC, among other things, to consider whether new development in the Meadowlands District should be avoided until the Commission implemented new rules concerning affordable housing:

...we believe the appropriate course is to direct the Commission to consider whether, and if so, to what extent, further development in the district should be avoided, pending adoption of the new zoning rules.

Accordingly, on July 25, 2007, the NJMC adopted Resolution No. 07-68, which approved new policies expanding its involvement in developing affordable housing in a manner consistent with the Appellate decision. These policies, embodied in the "Policy Statement Regarding NJMC's Expanded Responsibilities to Plan for Affordable Housing," included a directive that the NJMC Staff prepare and implement, as soon as practicable, separate guidelines to govern the review of and restraints upon applications for further development in the District.

The Staff released the proposed Guidelines, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission," on July 30, 2007. A public hearing was convened on August 9, 2007 to obtain comments. The ensuing public comment period ended August 10, 2007. The Emergency Restraints were approved by the NJMC Board of Commissioners on September 19, 2007.

## **II. History of the Subject Property**

### **A. Ownership**

Before 1967, the Hawk Realty site was owned by the Erie Lackawanna Railway Company as part of its Secaucus Yards property. Trustees for Erie Lackawanna sold the property in 1981 to Hawk Realty, the current owner.

### **B. Development Proposals**

In 2003, an approximately 90-unit residential development was proposed for the Hawk property by the Kalian Companies, a residential developer in New Jersey. Kalian proposed to rezone the Hawk property from the zoning designations in place at the time, which were Parkside Residential (Block 5, Lot 4), Light Industrial & Distribution A (Block 5, Lot 6) and Marshland Preservation (Block 5, Lot 4.01), to the Planned Residential zone. The submission proposal included 3 multi-story apartment buildings, each with 4 levels of residential over a parking garage level with 184 spaces and the access driveway. However, a formal application for this development was never submitted to the NJMC for approval.

Kalian's informal submission was problematic for several reasons. First, Kalian indicated that their proposal would result in "no need for major filling of wetlands," meaning that nearly the entire development would be constructed on 4.19 acres of uplands, however, it was not specifically stated where wetlands fill would be required. The concept plan showed an access road leading from the buildings to the 1,839' by 60' tract of land connecting the Hawk property to County Road Extension. However, from this same concept plan, it appears that the access road traverses a 2,625 square foot area of wetlands. This factor, in addition to other common development considerations such as site circulation, emergency vehicle access including the provision of a fire apparatus access road, and the remote location of the property, were not considered or resolved in Kalian's concept plan.

## **III. COAH's Site Suitability Criteria and NJMC's Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission**

### **A. State Development and Redevelopment Plan (SDRP)**

The Hawk Realty property is within the Hackensack Meadowlands District (the District). Since the NJMC has sole planning and zoning jurisdiction over lands within the District, "Planning Areas," as described by the State Development and Redevelopment Plan and the Residential Site Improvement Standards do not apply to the subject property or any other lands within the District.

### **B. NJMC Zoning Regulations**

The 35.1-acre Hawk Realty property is located on Block 5, Lots 4, 4.01 and 6, in the Town of Secaucus, and lies within the Passive Recreation Zone of the Secaucus Transit Village Redevelopment Area (**Attachment C**). According to Section IV.B.4 of the Secaucus Transit Village Redevelopment Plan:

The Passive Recreation Zone shall provide open space and passive recreation opportunities for residents, employees, and visitors to the Town of Secaucus and the Transit Village. The zone shall maximize the opportunities for passive enjoyment of the Hackensack River by providing for:

- a. Public access features including trails, site furnishing, signage, and structures that facilitate wildlife observation;
- b. Scientific and educational study and experimentation in regard to wetland ecology and nature;
- c. Wetland enhancement, restoration, or creation activities; and
- d. Wildlife habitat creation.

The subject property is bordered by the Hackensack River to the west, several light industrial land uses to the east and southeast, and the Fraternity Meadows residential development to the south. The NJ Transit Main Line runs along the northern end of the eastern boundary of the subject property. The subject property is very irregular in shape, with a large portion of wetlands on the southeastern portion of the property. The center of the property is very narrow, and wetlands continue to the northwestern portion of the property. A very narrow portion of the property is uplands, which are immediately adjacent to the NJ Transit Main Line, a heavily used commuter railroad line. Industrial properties with warehouses and trailer storage border the subject property along much of its length to the east. There are contiguous sections of uplands on the subject property; however, there is a small isolated portion of wetlands, approximately 2,625 square feet, which lies between the uplands and the property's only access point.

Residential development of any kind, including affordable housing, is not a permitted use in the Passive Recreation Zone of the Secaucus Transit Village Redevelopment Area. In order for residential development to occur on the subject property, an amendment to the Redevelopment Plan would be required, unless the site is deemed suitable for affordable housing under the Guidelines.

### **C. Environmental Hazards**

According to NJMC and COAH site suitability criteria, a site shall be deemed unsuitable for affordable housing if any former or existing land uses on the site or in the vicinity may expose residents to environmental hazards. A Preliminary Assessment/Phase I Environmental Site Assessment (PA/ESA) was performed on the subject property in 2005 by PMK Group. This assessment revealed no on-site contamination associated with the subject property. However, several Areas of Concern (AOC) were noted in the assessment as follows:

1. Several piles of debris, including furniture, wood, shingles, construction debris, etc. were observed on the portion of the property closest to the County Road Extension.
2. A Public Service Electric & Gas (PSE&G) high voltage power transmission line crosses the northern end of the property.
3. Several sites within the specified American Society for Testing and Materials (ASTM) search distances (ASTM Standard E1528-05) are listed with environmental classifications. Based on the status and location of surrounding sites with environmental classifications, it is unlikely that contamination from these sites has the potential to

impact the subject property. No evidence was presented in the assessment that indicated the presence of off-site impacts to the property. However, additional investigation would be required to verify this.

#### **D. USACOE Wetlands**

A Jurisdictional Determination (JD) was requested of the U.S. Army Corps of Engineers (USACOE) on August 27, 2003, based on a wetlands delineation performed by Boswell Engineering. The USACOE determined that there were 30.91 acres of jurisdictional waters on the subject property, consisting of 20.71 acres of wetlands and 10.2 acres under water, with 4.19 acres of wooded uplands. **Attachment D** shows the wetlands portion of the site in greater detail.

According to an appraisal completed by Capital Appraisal, Inc. on March 22, 2007, the uplands portion of the subject property is long and narrow, measuring slightly more than 300' feet at its widest point and tapering to a point at the northern end of the site. Much of the uplands area is approximately 100 feet wide. There is an isolated area of wetlands measuring 2,625 square feet at the southern end of the uplands portion of the site. In order to create access to the uplands area, it would be necessary to fill this isolated portion of wetlands in part or entirely.

#### **E. Category One (C1) Waterway Constraints**

The portion of the Hackensack River adjacent to the subject property is not a C1 waterbody. Waterbodies are designated as C1 on the basis of their exceptional water supply significance. Designation as a C1 waterbody is the highest form of water quality protection afforded by the state, intended to prevent any measurable deterioration in existing water quality and limit development impacts and discharges to the streams. Under the New Jersey Department of Environmental Protection's (NJDEP) stormwater rules, C1 waterbodies are protected from new development within a 300-foot buffer on either side of the waterway.

As per the NJDEP's surface water quality classification at N.J.A.C. 7:9B, the Hackensack River above the Oradell Dam is designated as a C1 waterbody. The Hackensack River within the Hackensack Meadowlands District is brackish (estuarine). The NJDEP surface water quality classification for the Hackensack River in the vicinity of the Hawk Realty site is SE2. SE2 means saline estuarine waters whose designated uses are as follows:

1. Maintenance, migration and propagation of the natural and established biota;
2. Migration of diadromous fish;
3. Maintenance of wildlife;
4. Secondary contact recreation; and
5. Any other reasonable uses.

#### F. NJMC Flood Control Regulations

According to the NJMC Zoning Regulations at N.J.A.C. 19:4-5.2(a)3,

The minimum lowest floor elevations for structures within the designated 100-year flood zones shall be established one foot above the applicable 100-year base flood elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

According FIRM Map Number 34003C0264G, dated September 20, 2005, the subject property is located in Zone AE, at Elevation 9. Therefore, any structures built on the site would be required to have a finished floor elevation at a minimum of 10 feet. Elevations on the uplands portion of the property range from 2 to 6 feet, with the property sloping up to the northwest. Substantial amounts of fill would be required to raise the elevation of the site to 10 feet. Placement of such a large amount of fill would likely result in a reduction in the uplands available for construction.

#### G. High Marsh Habitat

The subject property contains high salt marsh. High marsh areas are mainly flooded during monthly spring tides and during storm and wind-driven tides. High marsh areas are not common; there may be as few as 55 acres of this habitat type in the 19,730-acre Hackensack Meadowlands District. Native plant species in the high marsh include saltmeadow cordgrass, spike grass (*Distichlis spicata*), and black rush. High marsh provides a habitat for numerous species of birds, reptiles, and mammals. Based on observations made by the NJ Audubon Society over a period of two years (August 2004 to August 2006) at two sites within the lower Hackensack Meadowlands District that contain high marsh habitat similar to that found at the Hawk Realty site, one could reasonably expect that some or all of the following bird species would be likely to use the site:

Endangered Species	Threatened Species	Special Concern
American Bittern	Black-crowned Night Heron	American Kestrel
Black Skimmer	Bobolink	Caspian Tern
Northern Harrier	Coopers Hawk	Great Blue Heron
Peregrine Falcon	Osprey	Spotted Sandpiper
Least Tern	Savannah Sparrow	Least Bittern

Although not observed by the Audubon Society at the two sites with similar high marsh habitat, the following two additional species would also be expected to use the Hawk Realty site, based on other observations made by the Audubon Society. A Bald eagle (endangered) was observed from a point in the Hackensack River just offshore from the Hawk Realty site and a Yellow-crowned night heron (threatened) breeding colony is located in the Harmon Cove area of Secaucus, approximately 1 mile upriver from the Hawk Realty site. A large portion of the Yellow-crowned night heron's diet consists of fiddler crabs, which utilize the high marsh area of the Hawk Realty site. Since the Hawk Realty site is within

the foraging range of the Yellow-crowned night heron, it would be reasonable to expect them to use the site for foraging.

The NJMC is authorized by N.J.S.A. 13:17-1 et seq. to preserve an ecological balance between natural and open space areas and development in order to provide for a comprehensive treatment of the ecological factors constituting the delicate environmental balance of the Meadowlands. Any development on this site would threaten its unique and scarce natural habitat and the species that occupy it.

#### **H. Steep Slope Constraints**

The NJMC does not have steep slope regulations as there are no steep slopes within the NJMC District. The subject property is relatively level.

#### **I. State or National Register of Historic Places**

The subject property is not listed on the State or National Register of Historic Places.

#### **J. Availability of Infrastructure**

There exists some ambiguity regarding access to the uplands portion of the subject property. County Road Extension ends at the southeastern corner of Block 5, Lot 4, approximately 1,839 feet from the uplands portion of the property. In order to access the property, one would have to traverse a 1,839' long by 60' wide narrow tract of land that was deeded to the Town of Secaucus by Erie Lackawanna in 1969 (see **Attachment E**, letter dated April 7, 2004 from the NJMC to Kevin Coakley). Also, as previously stated, in order to access the uplands portion of the site, it would be necessary to fill a 2,625 square feet area of isolated wetlands on the subject site.

Public utilities, including water, sewer, electricity, gas, and telephone, are available at County Road Extension. A Public Service Electric & Gas (PSE&G) high voltage power transmission line crosses the northern end of the property, with a tower located within the wetlands portion of the subject property, approximately 75 feet from the edge of the uplands portion of the site.

At its closest point, the subject property lies approximately 35 feet from the railroad tracks of the NJ Transit Main Line, a heavily used commuter rail line. Every weekday, 116 trains travel on this rail line (58 inbound to NY/Hoboken, 58 outbound to Port Jervis), and on Saturdays and Sundays, there are 77 trips per day (36 inbound to NY/Hoboken, 41 outbound to Port Jervis). Due to the nearby crossing of the Hackensack River Bridge and immediate approach to Secaucus Junction station, the speed limit along the stretch of track between these two points is 45 MPH. The speed limit on the stretch of track that includes the interlocking where the Bergen County and Main Lines merge is 30 MPH. This merge point is directly adjacent to the Hawk property.

As per the Redevelopment Plan, all uses in the Secaucus Transit Village Redevelopment Area must comply with Category A environmental performance standards. Any proposed development must comply with standards for noise and vibration at N.J.A.C. 19:4-7. In

accordance with Performance Standard Category A, noise shall not exceed 65dBA on or beyond the subject property line. Vibrations shall not exceed the maximum peak particle velocity of .02 inches per second. The existing active rail line adjacent to the subject property would likely exceed these Category A performance standards.

#### **K. Consistency with NJMC Master Plan**

Utilization of the subject property for anything other than passive recreation, as described by the Secaucus Transit Village Redevelopment Plan, would be inconsistent with the 2004 NJMC Master Plan.

The 2004 NJMC Master Plan has several goals, among them to preserve and enhance wetlands and other valuable natural resources. Another goal calls for a balanced mix of housing types and costs. While the NJMC continues to work towards the goal of a mix of housing types, sensitive wetland habitats are not an appropriate location for any type of development.

#### **IV. Conclusion**

This study recommends that the NJMC determine that the Hawk property is unsuitable for affordable housing.

To begin, there are complex access issues related to the property that range from physical constraints to environmental and legal obstacles. Further, the remote location of the property and its configuration would likely require the filling of environmentally sensitive wetlands in order to gain access to the uplands portion of the property. In addition, the property may indeed be landlocked, due to an unacknowledged transfer of property to the Town of Secaucus. Importantly, the unique high marsh on the Hawk property is home to several threatened and endangered species. Any development on this site would threaten its unique and scarce natural habitat and the species that occupy it.

There are also significant practical considerations that are either difficult to address or insurmountable. For instance, the property line sits just 35 feet from a heavily utilized commuter railroad line on which 116 trains travel every weekday, and 76 every weekend day. Noise and vibrations from the adjacent rail lines would be a nuisance to potential residents. Also, due to the very low site elevation, a significant amount of fill would be required to bring the property up to NJMC's required finished floor elevation, further reducing the available land for construction.

For the foregoing reasons and due to all of the environmental and practical constraints described herein, it is recommended that the NJMC determine that the Hawk property is unsuitable for affordable housing.

Attachment A  
NJMC Resolution No. 07-78, dated September 19, 2007



**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR  
TO ENTER INTO AN AGREEMENT WITH  
ALLIED OUTDOOR ADVERTISING, INC.  
TO PURCHASE PROPERTY IN SECAUCUS, NJ**

**WHEREAS**, The New Jersey Meadowlands Commission (NJMC) is authorized by N.J.S.A. 13:17-1 et seq. to preserve an ecological balance between natural and open space areas and development to provide for a comprehensive treatment of the ecological factors constituting the delicate environmental balance of the Meadowlands; and

**WHEREAS**, the properties described in this resolution will be preserved upon acquisition; and

**WHEREAS**, Allied Outdoor Advertising, Inc., which acquired ownership through its merger with Hawk Realty Corp., is the present owner of the property consisting of 35 acres of land in Secaucus, designated as Lots 4, 4.01, and 6 in Block 5; and

**WHEREAS**, the NJMC shall make best efforts to seek reimbursement from its grants from the Port Authority of New York and New Jersey; and

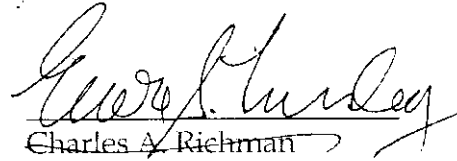
**WHEREAS**, the total purchase price for the property is \$2,500,000.

**NOW, THEREFORE, BE IT RESOLVED** that the NJMC hereby authorizes the Executive Director to enter into an agreement with Allied Outdoor Advertising, Inc., for the purchase of Lots 4, 4.01, and 6 in Block 5, for a price not to exceed \$2,500,000; and

**BE IT FURTHER RESOLVED**, that the Agreement may contain such further terms and conditions as the Executive Director shall deem to be necessary, proper and in the best interest of the NJMC; and

**BE IT FURTHER RESOLVED**, that the Executive Director is hereby authorized to enter into any and all other agreements and to take any and all other actions deemed necessary, proper and in the best interest of the NJMC to effectuate the closing of title on the Property as well as the objectives stated herein, including but not limited to the performance of a site suitability study to determine whether the property is suitable for the construction of affordable housing.

The foregoing Resolution was adopted by Commission vote.



Charles A. Richman  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of September 19, 2007.



Robert R. Ceberio  
Secretary

Resolution 07-78

Attachment B

*Emergency Restraints upon Further Development in the Meadowlands District,  
Instituted by the New Jersey Meadowlands Commission (Guidelines), adopted by  
the NJMC on September 19, 2007*

**Emergency Restraints upon Further Development in the Meadowlands District,  
Instituted by the New Jersey Meadowlands Commission  
*Adopted by the NJMC at the 9/19/07 Commission Meeting***

**I. Intent and Purpose**

In a decision issued May 21, 2007, the Appellate Division affirmed that the New Jersey Meadowlands Commission (NJMC) is authorized to affirmatively plan for affordable housing in the Meadowlands District. IMO Adoption of N.J.A.C. 19:3, 393 N.J. Super. 173 (App.Div.2007). The Commission will address these planning issues promptly following publication of amended Third Round rules by the Council on Affordable Housing (COAH) Id. at 179; see also, IMO Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App Div.) Certif. denied, N.J. \_\_ (2007). The Appellate Division further directed the NJMC to consider whether, and if so, to what extent, further development in the District should be avoided pending adoption of the new zoning rules. 393 N.J. Super. at 184.

The NJMC has determined that immediate restraints on further development in the Meadowlands District, as described herein, are necessary, because continued non-inclusionary development will substantially and adversely impact existing opportunities for lower income housing within the District.

In NJMC Resolution No. 07-68 adopted at its July 25, 2007 meeting, the NJMC directed its staff to prepare guidelines that will govern the review of and restraints upon applications for development in the District. The NJMC has directed that these guidelines be implemented as soon as practicable.

The guidelines that appear herein shall apply to all zoning certificate applications received on or after May 21, 2007 (the date of the relevant decision) and shall remain in effect until the NJMC's new zoning regulations governing affordable housing become effective or these guidelines are withdrawn or rescinded by Commission action or court order, whichever shall occur first.

**II. NJMC Guidelines for Period of Emergency Restraints**

- (a) Compliance with these guidelines and all pertinent COAH requirements shall be a condition of any zoning certificate issued by NJMC with respect to applications filed with the NJMC pursuant to N.J.A.C. 19:4-4.2, on or after May 21, 2007.
- (b) The NJMC shall not issue a certificate of completion and/or occupancy certification unless the proposed project complies with these guidelines.
- (c) These guidelines shall constitute the controlling instrument with respect to development in the District.

(d) Zoning certificate applications for the following are exempt from these guidelines:

1. Development limited to one or two market-rate dwelling units;
2. Development by municipal, county, state, and federal government; and utilities, housing and improvement authorities;
3. Signs, fences, site improvements, tanks, antennae, communications transmission towers, recycling and/or refuse areas, compactor pads, and external mechanical equipment; and
4. Change in use within an existing structure, provided that the aforementioned change does not increase the occupancy load by 25 or more people.

(e) A team of three (3) NJMC staff members, one of whom shall be a licensed professional planner and one of whom shall be a licensed professional engineer ("Review Team") shall review each application for a zoning certificate and prepare a recommendation regarding the suitability of the subject property for affordable housing. The recommendation shall be forwarded to the Commission for final action.

1. A site shall be deemed unsuitable for affordable housing if it is located within one of the following zones:
  - i. Environmental Conservation;
  - ii. Parks and Recreation;
  - iii. Aviation Facilities; or
  - iv. Public Utilities.
2. A site located within the following zones is generally deemed unsuitable for housing. However, a property owner may request that the Review Team evaluate the suitability of a particular site based on specific site characteristics, including size, location, surrounding land uses, environmental factors, and access to appropriate streets and adequate infrastructure:
  - i. Light Industrial B;
  - ii. Intermodal A;
  - iii. Intermodal B; or
  - iv. Heavy Industrial.
3. A site shall be deemed unsuitable for affordable housing pursuant to any of the following:
  - i. The parcel contains less than 7,500 square feet of buildable land;

- ii. Former and existing land uses, either on the site or in the vicinity, may expose residents to environmental hazard, unless the site is remediated to NJDEP residential standards;
  - iii. The size, shape, or layout of any existing structures, or other physical limitation(s) not listed previously, precludes residential use;
  - iv. The site does not meet applicable COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5; or
  - v. The site is unsuitable for residential use pursuant to sound planning principles.
- (f) The development of any site determined to be suitable for affordable housing shall be halted until new NJMC zoning regulations governing affordable housing become effective. Exceptions shall be made with respect to development described in Paragraphs (g) and (h) below.
- (g) The Review Team shall permit applications for residential development to proceed in accordance with N.J.A.C. 19:4-4 where a minimum of 20 percent of the units are designated as affordable housing.
- 1. The development may include accessory uses intended to contribute to the comfort, convenience, or necessity of residents. These accessory uses may result in an increased affordable housing obligation.
  - 2. The NJMC acknowledges the need for municipalities to provide balanced affordable housing opportunities for families with children and older householders. Therefore, to promote a balance, development with age-restricted affordable housing may be halted if the Review Team determines that such development will result in the creation of affordable age-restricted units in excess of 25 percent of the municipality's growth share obligation, calculated in accordance with N.J.A.C. 5:94-2.
- (h) Applications for non-residential development on sites the Review Team deems unsuitable for affordable housing pursuant to Paragraph (e) shall proceed in accordance with the procedures in N.J.A.C. 19:4-4 as long as the applicant provides for affordable housing elsewhere within the municipality subject to the following formula:
- 1. One affordable housing unit shall be provided for every 25 new jobs created, pursuant to the standards published by COAH as N.J.A.C. 5:94, Appendix E.

2. When these calculations result in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place to facilitate that calculation of a payment in lieu of construction.
  3. The NJMC reserves the right to promulgate rules to achieve consistency when COAH adopts amendments to its third round rules.
- (i) The applicant shall address the affordable housing requirement calculated in Paragraph (h) through one or a combination of the following methods:
1. Construction of affordable housing units elsewhere within the subject municipality. A written agreement between the developer and the municipality for the construction of affordable units elsewhere within the municipality shall be provided to the Review Team prior to issuance of any zoning certificate.
  2. A payment in lieu of construction to the Commission, which shall be determined and collected as follows:
    - i. The payment shall be calculated in accordance with the per-unit rates provided in Table 1 below.

TABLE 1

<b>Payments in Lieu of Construction</b>	
<u>Municipality</u>	<u>Per Unit Amount</u>
Carlstadt	\$147,072
East Rutherford	\$141,433
Jersey City	\$140,690
Kearny	\$142,887
Little Ferry	\$142,186
Lyndhurst	\$144,924
Moonachie	\$146,008
North Arlington	\$144,268
North Bergen	\$142,867
Ridgefield	\$153,596
Rutherford	\$145,328
Secaucus	\$144,128
South Hackensack	\$143,178
Teterboro	\$143,255

- ii. When the calculation results in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place and multiplied by the per-unit payment rate.
  - iii. The submission of such payment to the NJMC shall be a condition of any zoning certificate.
  - iv. The NJMC shall not issue a certificate of completion or occupancy certification for the development that generated the affordable housing requirement until such payment is received in full or until a guaranteed payment plan is effectuated.
- 3. In a municipality that has an adopted growth share ordinance, a payment in lieu of construction fee shall be calculated and collected by the municipality, and not by the Commission. Proof of payment to the municipality shall be submitted to the NJMC prior to the issuance of any certificate of completion or occupancy certification.
- (j) The entire development shall be subject to the bulk requirements of the zone in which it is to be constructed unless altered by the NJMC pursuant to these guidelines.
- (k) The maximum permitted residential density in any zone that does not provide a density for housing shall be 30 dwelling units per acre. An increase in this density will be considered by the NJMC subject to the submittal by the applicant of a planning report prepared by a NJ-licensed professional planner. The planning report shall be reviewed by the Review Team and a recommendation shall be made to the Commission.
- (l) A rental bonus of three dwelling units per acre shall be permitted for every 25 affordable units reserved for renter households, exclusive of any density permitted in accordance with Paragraph (k).
- (m) The minimum parking requirement for affordable units shall be one space for each affordable unit. In multiple family dwelling developments, affordable units shall not be required to provide visitor parking.
- (n) The administration of affordable housing units provided in accordance with these guidelines shall conform to the requirements of COAH's substantive rules, N.J.A.C. 5:94 and the New Jersey Housing and Mortgage Finance Agency (HMFA)'s Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, as amended and supplemented.
- 1. These provisions include, but are not limited to, requirements regarding phasing of units, controls on affordability, proportion of units allocated to persons of



low- or moderate-income, heating sources, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.

2. The municipality shall be responsible for such administration, and may designate a COAH-approved entity to administer the affordable units for the duration of the required administration period.
  - i. The cost and expense of such administration may be imposed upon the developer pursuant to the terms and conditions of a duly adopted municipal ordinance.
  - ii. The entity shall assume the responsibilities of the administrative agent set forth by HMFA in N.J.A.C. 5:80-26.
  - iii. The municipality may request the NJMC to serve as the administrative agent.
  - iv. Funds from the sale of affordable units with extinguished affordability controls shall be deposited into the municipality's escrow account established in accordance with Paragraph (o).
- (o) All payments in lieu of constructing affordable housing units on site and funds from units with extinguished controls, collected by the NJMC in accordance with these guidelines, shall be deposited in an interest-bearing escrow account established by NJMC for the municipality in which the units would have been constructed.
  1. The escrow accounts shall be created pursuant to the terms of a three-party escrow agreement between each constituent municipality, the financial institution, and the NJMC.
  2. The NJMC shall include in future rulemaking provisions regarding the release of these funds to a municipality for the purpose of creating affordable housing.

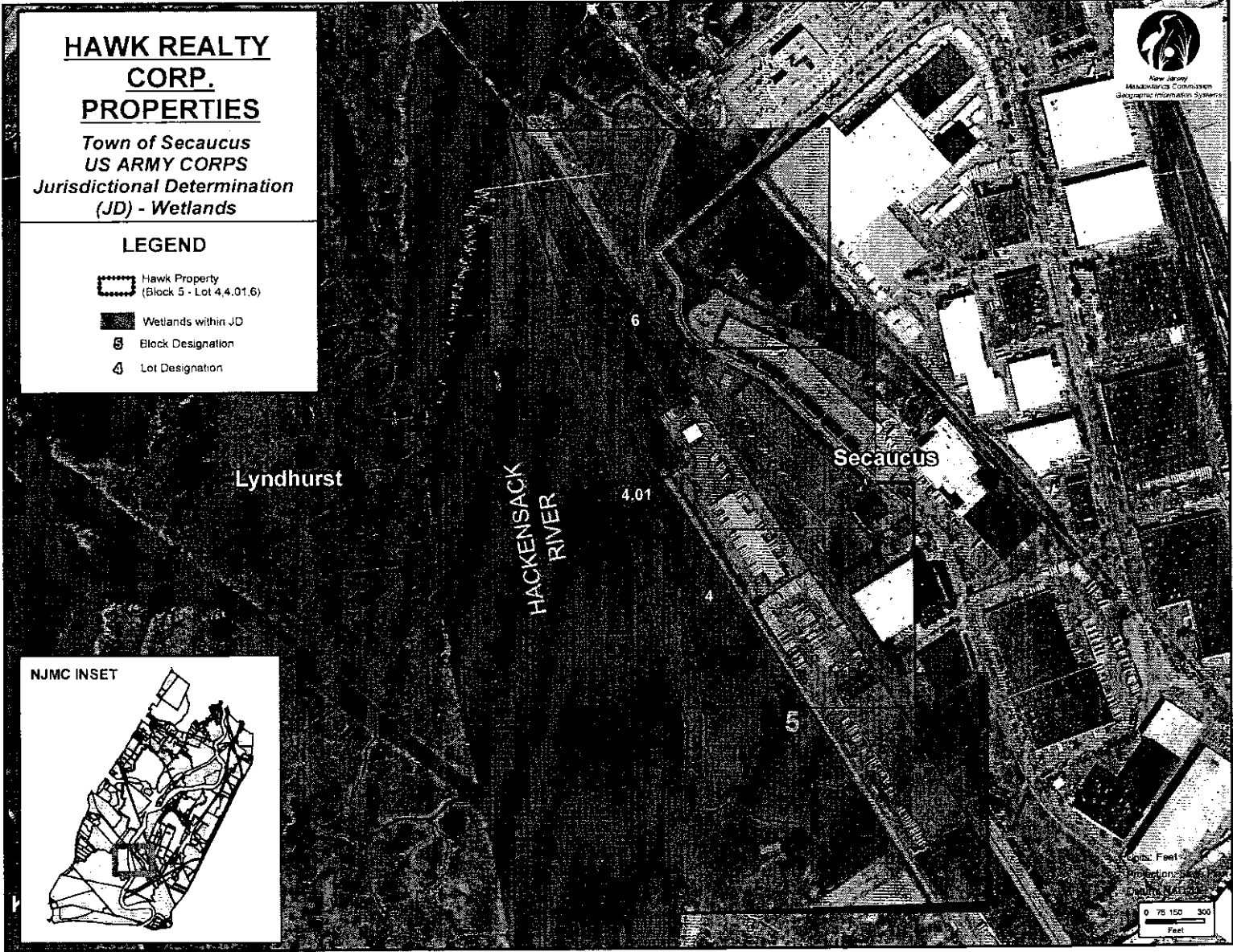
### III. Notice Requirements

- (a) The NJMC staff shall post, on the NJMC website at [www.njmeadowlands.gov](http://www.njmeadowlands.gov), a list of all applications received on or after January 1, 2007.
- (b) All recommendations regarding site suitability shall be brought before the Commission and shall be subject to the same public notice requirements as any Commission agenda item.
- (c) The NJMC staff shall notify a municipality of any zoning certificate application that will affect that municipality under these guidelines.

#### **IV. Appeals**

Property owners who believe that the NJMC's application of these guidelines to a proposed development or specific property adversely affects them may file an appeal as provided by NJMC regulations. See N.J.A.C. 19:4-4.19.

Attachment C  
Location Map of Subject Property/ Aerial Photograph



Attachment D  
Aerial Photograph of Hawk Property Wetlands



Attachment E  
Letter dated April 7, 2004 from the NJMC to Kevin Coakley



Governor  
James E. McGreevey

Chairman  
Susan Bass Levin

Commissioners  
James A. Anzavino  
Michael J. Gonnelli  
Leonard R. Kaiser  
Mia M. Macri  
Eleanor S. Nissley  
Arleen Walther

## New Jersey Meadowlands Commission

Administration Building: One DeKorte Park Plaza Phone: 201-460-1700 Fax: 201-460-1722  
Meadowlands Environment Center: Two DeKorte Park Plaza Phone: 201-460-8300 Fax: 201-342-0630  
Lyndhurst, NJ 07071 [www.meadowlands.state.nj.us](http://www.meadowlands.state.nj.us)

April 7, 2004

Executive Director  
Robert R. Ceberio

Kevin Coakley, Esq.  
Connell Foley LLP  
85 Livingston Ave.  
Roseland, NJ 07068-1765

Re: Location of New County Road Extension  
Hawk Realty: Block 5 - Lots 4, 4.01 & 6  
Lake Shore Venture: Block 5 - Lot 7.01

Dear Mr. Coakley:

Pursuant to our discussions, I have reviewed the documentation provided and researched the law with respect to the status of a 1,839' by 60' area in the Town of Secaucus and its relationship to Block 5, Lots 4, 4.01, 6 and 7.01. This question has arisen in connection with a conceptual housing application for the Hawk Realty site (Lots 4, 4.01 and 6 in Block 5) and a pending application by Lakeshore Ventures (Lot 7.01 Block 5).

In particular, I have reviewed whether the aforementioned lots individually and/or collectively front on a public road.

Although I don't have a comprehensive title search I expect, based on the deeds and inquiry, that the state of facts are as follows:

1. County Avenue Extension, based on the current Secaucus Tax Map (1982 base year), ends at the intersection of Block 5 Lot 4 at its intersection with Block 5 Lots 3 and 7.02 (at Division Creek). The Secaucus Tax Map shows a "30 foot Private R.O.W." running northwest from the aforesaid intersection (along the common line of Lots 4 and 7.02/7.01).
2. Prior to 1967 Erie owned lots 2, 3, 4, 4.01, 5, 6, 7.01 and 7.02.
3. In 1967 Erie sold 7.01 to Kaplan and Segal (which resold to Lakeshore Ventures). As part of the transaction Erie granted a 20' easement to Kaplan and Segal (which contributed some of its property) in order to create a 30' easement to County Avenue Extension - which terminated 1,839 feet away at Division Creek.



4. On June 19, 1969 Erie deeded Kaplan and Segal additional lands from a distance of 1,839' for a width of 50' plus 10' (recorded 12/17/69 in Deed Book 3069 Page 1095). The relevant portion of the deed states that:

Containing 2.11 acres, more or less. Together with the estate, right, title and interest of the party of the first part in and to the 10-foot strip, to the east of the above-described property, which such 10-foot strip, together with the lands hereinabove described, shall be used for the purpose of establishing the roadway for ingress and egress to and from New County Road to other lands now or formerly of Erie Lackawanna Railway Company.

5. In December of 1969 Kaplan and Segal deeded the 1,839' by 60' swath to the Town of Secaucus (Deed Book 3102, Page 998). The deed did not mention ingress, egress or a road. Secaucus never assigned a tax lot to this swath and continued to show the 1967 "30' Private R.O.W." on its tax map.
6. Secaucus did not sign (i.e. acknowledge) the 1969 deed.
7. Secaucus's 1982 tax map (and all subsequent amendments) noted the 1967 easement but did not reference the 1969 deed into Secaucus.
8. Secaucus never assigned a tax lot and block to the 1,830' by 60' swath.
9. Trustees for Erie sold Lots 4, 4.01 and 6 in Block 5 to Hawk Realty.
10. Someone (probably Lakeshore Ventures) paved a portion of this 1,839' by 60' swath within the 30' wide part of the swath (i.e. the original easement area).
11. A Manalio and Manalio survey dated January 6, 1989 last revised January 29, 1991 shows the aforesaid 60 foot area as "New County Road Extension (Private Road)";
12. Lakeshore Venture's Map describes the 30 foot northern half of this 60 foot swath as a "30' Private R.O.W. Easement";
13. Hawk Realty's Army Corps of Engineering (ACOE) jurisdictional map dated August 8, 2003 last revised December 30, 2003 prepared by Boswell Engineering (which map is not to scale) deems the 1,839' x 60' area as a public road.
14. Frank Leanza, the Attorney for the Town of Secaucus, has indicated that Secaucus was not aware of the 1969 Deed until so informed of as a result of this instant inquiry.

Kevin Coakley, Esq.

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April 7, 2004

Based upon the information noted above, the 1,839' by 60' parcel does not rise to the level of a public street or roadway. Specifically, the steps required for the creation of a public highway have been long established, as follows:

- Step 1 - By a laying out according to the statute;
- Step 2 - By the uninterrupted use and enjoyment by the public of the road as a highway for not less than 20 years without any circumstances to negative the intention to dedicate; and
- Step 3 - By the actual dedication by the owner to the public as a highway. [Township of Parsippany-Troy Hills v. Victor Bowman, 3 N.J. 97, 103-04, 69 A.2d 199 (1949) (quoting Smith v. State, 23 N.J.L. 712 (E. & A.1852)).] A more recent decision affirming that these three methods are the means by which a public road is established is Acken v. Campbell, 134 N.J. Super. 481, 488, 342 A.2d 209 (App.Div.1974), aff'd, 67 N.J. 585, 342 A.2d 172 (1975).

There is no indication that Step 1 above has been fulfilled. I find no facts presented indicating that a "laying out" of this roadway has occurred as provided in any Statute.

Step 2 of the Smith analysis has also not been met. The roadway in question has not been used and/or enjoyed by the public for any significant period of time, let alone twenty years. The analysis as to how a roadway may be determined as public or private in nature is clearly set forth in the Acken decision noted above at page 488. Specifically:

"One of the essential attributes of a prescriptive right is the use by the public of the neighborhood. Riverside v. Pennsylvania Railroad Co., supra. In our view, such a public use is not made out by proof of the use of a crossing, either by the employees of or those having business with the concerns to whose plants or docks it gives access".

That analysis is directly on point with the facts presented with respect to the "New County Road Extension" described on Boswell Engineering's map. The parcel in question has had no other use other than by the owners, occupiers and invitees of the adjacent parcels to wit: Lakeshore Ventures (Lot 7.01) and its predecessor in title.

Finally, as to Step 3, it may be argued that the deed from Erie to Secaucus in December of 1969, as a dedication, would satisfy this criterion. However, the fact that a Deed vests rights in the Town of Secaucus does not in and of itself create a public road. There is no evidence that the town "accepted" the parcel as a public street; which is a condition precedent of a public roadway.

Kevin Coakley, Esq.

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April 7, 2004

As I understand the facts, this parcel has neither been improved nor maintained by any public entity. As noted above, having only been used – for the most part - by the owners, occupiers and invitees of the adjacent parcels to wit: Lakeshore Ventures which has used same pursuant to an easement as shown on the Secaucus Tax Map and a site plan prepared by Cascino Engineering; these facts alone do not support the allegation that the roadway is public in nature.

Consequently the 1969 Deed(s) from Erie to Kaplan and Segal establishes no more than a private easement/driveway used for access and egress between New County Road and the former Erie Lackawanna Railway Company parcels (Lots 4, 4.01 and 6)– as well as to other adjacent property owners (Lot 7.01). This private easement would allow pedestrians and limited vehicular traffic, just as any driveway would.

Going forward there are three possibilities. First, Secaucus could accept the parcel, improve the street and begin the maintenance of same as a public roadway if the municipality deemed it in its best interest. Second, Secaucus could treat it as a paper street vacating the property and deeding same to the adjacent property owners (Lakeshore Ventures Lot 7.01 and Hawk Realty Lot 4). Third, Secaucus could choose to take no action.

Very truly yours,



Kevin Funabashi  
Chief Legal Counsel

cc: Frank Leanza, Town Attorney  
Jame Terhune, Tax Assessor  
Gerald Perricone, Town Engineer  
Robert Ceberio, NJMC  
Ileana Kafrouni, NJMC  
Sharon Mascaro, NJMC  
Thomas Marturano, NJMC  
Debbie Lawlor, NJMC  
Robert Gambell, DAG  
Christine Piatek, DAG  
George Cascino, P.E.

**RESOLUTION ISSUING A DECISION ON THE  
SUITABILITY RECOMMENDATION AS REQUIRED BY THE  
NJMC EMERGENCY RESTRAINTS UPON FURTHER DEVELOPMENT  
FOR FILE NO. 07-492 161 RAILROAD AVE LLC/  
AERO MOLDING & MACHINING - ADDITION  
BLOCK 4014, LOT 13, IN THE BOROUGH OF RIDGEFIELD**

**WHEREAS**, in a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing; and

**WHEREAS**, on July 25, 2007, the Commission adopted Resolution No. 07-68, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing"; and

**WHEREAS**, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission," that will govern the review of and restraints upon applications for further development in the Meadowlands District; and

**WHEREAS**, the Guidelines govern all zoning certificate applications received on or after May 21, 2007 and remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first; and

**WHEREAS**, the Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use; and

**WHEREAS**, a zoning certificate application was submitted to the NJMC on September 12, 2007, by Donal Bermingham for Aero Molding & Machining, Inc., for the premises identified as 161 Railroad Avenue, Block 4014, Lot 13, in the Borough of Ridgefield, New Jersey and which is located in the Light Industrial B zone; and

**WHEREAS**, the application proposes to construct a 14,000 square foot warehouse addition on the subject property, and as such, is not exempt from the Emergency Restraints; and

**WHEREAS**, the application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints; and

**WHEREAS**, a suitability review, dated October 18, 2007, and attached hereto, has been prepared, indicating the recommendation of the Review Team in this matter; and

**WHEREAS**, the suitability review recommends that the subject property is unsuitable for residential use; and

**WHEREAS**, the members of the NJMC have reviewed the suitability review and recommendation prepared by the Review Team, regarding the subject property; and

**WHEREAS**, the members of the NJMC concur with the recommendation of the Review Team; and

**WHEREAS**, the NJMC hereby determines that the subject property is unsuitable for residential use.

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the subject property located at Block 4014, Lot 13, in the Borough of Ridgely is unsuitable for residential use.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

# Memorandum

P. 82

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert Ceberio, Executive Director

From: Ileana Kafrouni Date: October 24, 2007

Subject: Site Suitability Recommendation for Property at 161 Railroad Avenue in the  
Borough of Ridgefield

In a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing. The Commission followed up by adopting Resolution No. 07-68, on July 25, 2007, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing. Thereafter, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission."

These Guidelines will govern the review of and restraints upon zoning certificate applications for further development in the Meadowlands District. The Guidelines apply to all zoning certificate applications received on or after May 21, 2007 and will remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first. The Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use.

A zoning certificate application was submitted to the NJMC on August 7, 2007, Donal Bermingham for Aero Molding & Machining, Inc., for the premises identified as 161 Railroad Avenue, Block 4014, Lot 13, in the Borough of Ridgefield, New Jersey and which is located in the Light Industrial B zone. The application proposes the construction of a 14,000 square foot warehouse addition on the subject property, and as such, is not exempt from the Emergency Restraints.

The application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints. A suitability review, dated October 18, 2007, has been prepared, indicating that the Review Team recommends that the subject property is unsuitable for residential use.

At this time, Staff is recommending that the members of the NJMC concur with the suitability recommendation prepared by the Review Team, regarding the subject property, which determines that the subject property is unsuitable for residential use.



File Information

File Number	07-492	Engineer/Planner	BA
File Name	161 Railroad Ave LLC/Aero Molding & Machining - Addition		Plan Reviewer
Block	4014	Address	161 Railroad Avenue
Lot	13	Town	Borough of Ridgefield

Exemptions

Date Entered	09/19/07	Evaluated By Sharon A. Mascaro
	09/19/07	

The following Zoning Certificate applications are exempt from the emergency restraints. If exempt, continue in accordance with N.J.A.C. 19:4-4. If not exempt, the application shall be referred to the Review Team.

- ☐ New residential building or addition limited to one or two market-rate dwelling units
- ☐ New building or addition by municipal, county, state, or federal government; or a utility, housing, or improvement authority
- ☐ Change of use within an existing structure that does not increase the occupancy load by 25 or more people (occupancy load determined by N.J.A.C. 5:94 Appendix E)
- ☐ Antennae
- ☐ Communications transmission towers
- ☐ Compactor pads
- ☐ Exterior equipment, HVAC systems
- ☐ Fences
- ☐ Fill/stockpile
- ☐ Recycling and/or refuse areas
- ☐ Signs
- ☐ Site improvements
- ☐ Tanks
- ☒ Not Exempt (Proceed to section 2. Review Team)

Date referred to review team: 09/19/07





**Review Team**

A team of three (3) NJMC staff members, one of whom shall be a license professional planner and one of whom shall be a licensed professional engineer ("Review Team") shall review each application for a zoning certificate and prepare a recommendation regarding the suitability of the subject property for affordable housing. The recommendation shall be forwarded to the Commission for final action.

**Site Suitability Review**

**Zone Designation**

a. Properties located in the following zones are deemed unsuitable for housing:

- ☐ Environmental Conservation Zone
- ☐ Parks and Recreation Zone
- ☐ Aviation Facilities Zone
- ☐ Public Utilities Zone

*Skip to section 6. Site Suitability Recommendation*

b. Properties located in the following zones are generally deemed unsuitable for housing. The subject property owner may, however, request that NJMC staff evaluate the site's suitability for housing. (If a request is received from property owner, skip to section 4. Site Characteristics)

- ☒ Light Industrial B Zone
- ☐ Intermodal A Zone
- ☐ Intermodal B Zone
- ☐ Heavy Industrial Zone

*Skip to section 6. Site Suitability Recommendation*

c. The subject property is located in the following zone or redevelopment area not listed above:

*Continue to section 4. Site Characteristics*



Site Characteristics

a. Size of property and associated buildable land

<input type="text"/>	-	<input type="text"/>	=	<input type="text"/>
Total Parcel Sq. Ft.		Portion constrained by improvements, wetlands, required open space, setbacks, easements or other constraints		Buildable Land

Describe Restraint:

b. Checking any of the following boxes deems the site unsuitable for housing:

- ☐ Contains less than 7,500 square feet of buildable land.
- ☐ Contains land uses (former and/or existing), either on the site or in the vicinity, which may expose residents to environmental hazards, unless the site is/has been remediated to NJDEP residential standards

Describe hazard(s) and indicate data source(s):

- ☐ The size, shape, or layout of any existing structures, or other physical limitation(s) not listed previously, precludes residential use.

Describe:

- ☐ The site does not meet applicable COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5.

- ☐ The application does not comply with pertinent wetland regulations.
- ☐ The site contains flood hazard constraints as defined in N.J.A.C. 7:13.
- ☐ The site is listed on the State or National Register of Historic Places.
- ☐ Adequate infrastructure, including utilities and/or roadways, is not available.

Describe COAH -related findings:

- ☐ The site is unsuitable for residential use pursuant to sound planning principles.

Describe:



5. Affordable Sites

☐ a. Application for residential use

i. Affordable units

Total units.....	<input type="text"/>
Market rate units.....	<input type="text"/>
Proposed affordable units.....	<input type="text"/>
Required affordable units (20% of total)....	<input type="text"/>
Additional units for accessory uses.....	<input type="text"/>
Total required affordable units.....	<input type="text"/>

☐ Meets minimum requirements for number of affordable units.  
*Skip to 5.a.ii*

☐ Does not meet minimum requirements for number of affordable units. Development shall not be permitted to proceed under the Emergency Restraints.

ii. Age-restricted housing

☐ The development contains age-restricted housing 25% or less of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Application shall proceed in accordance with procedures in N.J.A.C. 19:4-4.

☐ The development contains age-restricted housing in excess of 25% of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Development shall not be permitted to proceed under the Emergency Restraints.

☐ b. Application for non-residential use

Development shall be halted until new NJMC zoning regulations governing affordable housing become effective.



**6. Site Suitability Recommendation**

- ☐ **Suitable site**
- ☐ May proceed: Residential proposed with affordable housing
  - ☐ May not proceed
    - ☐ Residential proposed w/o affordable housing
    - ☐ Non-residential proposed
- ☒ **Unsuitable site:** May proceed w/ payment in lieu of construction or construction of affordable units off-site

**RESOLUTION ISSUING A DECISION ON THE  
SUITABILITY RECOMMENDATION AS REQUIRED BY THE  
NJMC EMERGENCY RESTRAINTS UPON FURTHER DEVELOPMENT  
FOR FILE NO. 07-483 SAW MILL PARK III/NEW OFFICE/WAREHOUSE  
BLOCK 150, LOT 44, IN THE TOWN OF KEARNY**

**WHEREAS**, in a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing; and

**WHEREAS**, on July 25, 2007, the Commission adopted Resolution No. 07-68, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing"; and

**WHEREAS**, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission," that will govern the review of and restraints upon applications for further development in the Meadowlands District; and

**WHEREAS**, the Guidelines govern all zoning certificate applications received on or after May 21, 2007 and remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first; and

**WHEREAS**, the Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use; and

**WHEREAS**, a zoning certificate application was submitted to the NJMC on August 2, 2007 by Jerry Del Fierro, of Russo Development, LLC, for the premises identified as Barczewski Street (660 Belleville Turnpike), Block 150, Lot 44, in the Town of Kearny, New Jersey and which is located in the Belleville Turnpike Redevelopment Area; and

**WHEREAS**, the application proposes to construct a 52,079 square foot office/warehouse, on the subject property, and as such, is not exempt from the Emergency Restraints; and

**WHEREAS**, the application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints; and

**WHEREAS**, a suitability review, dated October 18, 2007, and attached hereto, has been prepared, indicating the recommendation of the Review Team in this matter; and

**WHEREAS**, the suitability review recommends that the subject property is unsuitable for residential use; and

**WHEREAS**, the members of the NJMC have reviewed the suitability review and recommendation prepared by the Review Team, regarding the subject property; and

**WHEREAS**, the members of the NJMC concur with the recommendation of the Review Team; and

**WHEREAS**, the NJMC hereby determines that the subject property is unsuitable for residential use.

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the subject property located at Block 150, Lot 44, in the Town of Kearny is unsuitable for residential use.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

# Memorandum

P. 91

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Ileana Kafrouni Date: October 18, 2007

Subject: Site Suitability Recommendation for Property on Barczewski St. in the Town of Kearny

In a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing. The Commission followed up by adopting Resolution No. 07-68, on July 25, 2007, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing. Thereafter, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission."

These Guidelines will govern the review of and restraints upon zoning certificate applications for further development in the Meadowlands District. The Guidelines apply to all zoning certificate applications received on or after May 21, 2007 and will remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first. The Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use.

A zoning certificate application was submitted to the NJMC on August 2, 2007, by Jerry Del Fierro, of Russo Development, LLC, for the premises identified as Barczewski Street (660 Belleville Turnpike), Block 150, Lot 44, in the Town of Kearny, New Jersey and which is located in the Belleville Turnpike Redevelopment Area. The application proposes the construction of a 52,079 square foot office/warehouse on the subject property, and as such, is not exempt from the Emergency Restraints.

The application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints. A suitability review, dated October 18, 2007, has been prepared, indicating that the Review Team recommends that the subject property is unsuitable for residential use.

At this time, Staff is recommending that the members of the NJMC concur with the suitability recommendation prepared by the Review Team, regarding the subject property, which determines that the subject property is unsuitable for residential use.





File Information

File Number	07-483	Engineer/Planner	KC
File Name	Saw Mill Park III/New Office/Warehouse		
Block	150	Address	Barczewski Street
Lot	44	Town	Town of Kearny
		Plan Reviewer	

Exemption

Date Entered

09/19/07

09/19/07

Evaluated By

Sharon A. Mascaro

The following Zoning Certificate applications are exempt from the emergency restraints. If exempt, continue in accordance with N.J.A.C. 19:4-4. If not exempt, the application shall be referred to the Review Team.

- ☐ New residential building or addition limited to one or two market-rate dwelling units
- ☐ New building or addition by municipal, county, state, or federal government; or a utility, housing, or improvement authority
- ☐ Change of use within an existing structure that does not increase the occupancy load by 25 or more people (occupancy load determined by N.J.A.C. 5:94 Appendix E)
- ☐ Antennae
- ☐ Communications transmission towers
- ☐ Compactor pads
- ☐ Exterior equipment, HVAC systems
- ☐ Fences
- ☐ Fill/stockpile
- ☐ Recycling and/or refuse areas
- ☐ Signs
- ☐ Site improvements
- ☐ Tanks
- ☒ Not Exempt (Proceed to section 2. Review Team)

Date referred to review team: 09/19/07



A team of three (3) NJMC staff members, one of whom shall be a license professional planner and one of whom shall be a licensed professional engineer ("Review Team") shall review each application for a zoning certificate and prepare a recommendation regarding the suitability of the subject property for affordable housing. The recommendation shall be forwarded to the Commission for final action.

**Zone Designation**

a. Properties located in the following zones are deemed unsuitable for housing:

- ☐ Environmental Conservation Zone
- ☐ Parks and Recreation Zone
- ☐ Aviation Facilities Zone
- ☐ Public Utilities Zone

*Skip to section 6. Site Suitability Recommendation*

b. Properties located in the following zones are generally deemed unsuitable for housing. The subject property owner may, however, request that NJMC staff evaluate the site's suitability for housing. (If a request is received from property owner, skip to section 4. Site Characteristics)

- ☐ Light Industrial B Zone
- ☐ Intermodal A Zone
- ☐ Intermodal B Zone
- ☐ Heavy Industrial Zone

*Skip to section 6. Site Suitability Recommendation*

c. The subject property is located in the following zone or redevelopment area not listed above:

Belleville Turnpike Redevelopment Area

*Continue to section 4. Site Characteristics*



4. Site Characteristics

a. Size of property and associated buildable land

143748 - 43124 = 100624  
Total Parcel Sq. Ft. Portion constrained by improvements, wetlands, required open space, setbacks, easements or other constraints Buildable Land

Describe Restraint:

30% minimum open space = 43,124 s.f.

b. Checking any of the following boxes deems the site unsuitable for housing:

- ☐ Contains less than 7,500 square feet of buildable land.  
☒ Contains land uses (former and/or existing), either on the site or in the vicinity, which may expose residents to environmental hazards, unless the site is/has been remediated to NJDEP residential standards

Describe hazard(s) and indicate data source(s):

See Attachment A.

- ☐ The size, shape, or layout of any existing structures, or other physical limitation(s) not listed previously, precludes residential use.

Describe:

- ☐ The site does not meet applicable COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5.

- ☐ The application does not comply with pertinent wetland regulations.  
☐ The site contains flood hazard constraints as defined in N.J.A.C. 7:13.  
☐ The site is listed on the State or National Register of Historic Places.  
☐ Adequate infrastructure, including utilities and/or roadways, is not available.

Describe COAH-related findings:

- ☒ The site is unsuitable for residential use pursuant to sound planning principles.

Describe:

See Attachment B.



5. Affordable Sites

☐ a. Application for residential use

i. Affordable units

Total units.....	<input type="text"/>
Market rate units.....	<input type="text"/>
Proposed affordable units.....	<input type="text"/>
Required affordable units (20% of total)....	<input type="text"/>
Additional units for accessory uses.....	<input type="text"/>
Total required affordable units.....	<input type="text"/>

☐ Meets minimum requirements for number of affordable units.  
*Skip to 5.a.ii*

☐ Does not meet minimum requirements for number of affordable units. Development shall not be permitted to proceed under the Emergency Restraints.

ii. Age-restricted housing

☐ The development contains age-restricted housing 25% or less of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Application shall proceed in accordance with procedures in N.J.A.C. 19:4-4.

☐ The development contains age-restricted housing in excess of 25% of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Development shall not be permitted to proceed under the Emergency Restraints.

☐ b. Application for non-residential use

Development shall be halted until new NJMC zoning regulations governing affordable housing become effective.



**6. Site Suitability Recommendation**

- ☐ **Suitable site**
- ☐ May proceed: Residential proposed with affordable housing
  - ☐ May not proceed
    - ☐ Residential proposed w/o affordable housing
    - ☐ Non-residential proposed
- ☒ **Unsuitable site:** May proceed w/ payment in lieu of construction or construction of affordable units off-site

## Suitability Review

File Number: 07-483  
Saw Mill Park III/New Office/Warehouse

### Attachment A:

#### 4. Site Characteristics

b.

- ☒ Contains land uses (former and/or existing), either on the site or in the vicinity, which may expose residents to environmental hazards, unless the site is/has been remediated to NJDEP residential standards.

Describe hazard(s) and indicate data source(s):

The site is a former landfill. A Site Investigation, Remedial Investigation Report, and Remedial Action Workplan, prepared by EcolSciences, Inc., dated January 5, 2005 (2006), for Block 150, Lots 44-51, in the Town of Kearny, was accepted by the NJDEP (see letter from Frank Coolick, NJDEP Solid and Hazardous Waste Program, dated July 11, 2006, to Edward Russo, Russo Development). As described in the Site Investigation Report, soil samples from the site included the following materials: petroleum hydrocarbons, hexavalent chromium, benzene, trichloroethylene, polycyclic aromatic hydrocarbons, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, chrysene, PCB's (polychlorinated biphenyls), chlordane (pesticide), antimony, arsenic, beryllium, copper, lead, mercury, nickel, thallium, and zinc. Many of the substances found exceed the applicable NJDEP residential direct contact criteria. NJDEP has accepted the deed restriction of the site to prohibit future residential use.

## Suitability Review

File Number: 07-483  
Saw Mill Park III/New Office/Warehouse

### Attachment B:

#### 4. Site Characteristics

b.

- ☒ The site is unsuitable for residential use pursuant to sound planning principles, including but not limited to the goals, policies, and strategies of the NJMC Master Plan.

Describe:

The site is unsuitable for residential use for the following reasons:

- Site is located at the end of a dead-end block containing three active warehouse/distribution facilities. The adjacent site is a Pepsi beverage distributor with parking for over 100 tractor-trailers with accessory electrical and propane hookups immediately adjacent to the site to the south. On an adjacent site to the north, there are loading doors for access by semi-trailers.
- The subject property is roughly one mile from the nearest residential/commercial portion of Kearny, separated by a heavily industrial area and a railroad right of way.
- There is no direct pedestrian access along Belleville Turnpike (State Route 7) between this site and the nearest existing commercial residential area of Kearny/North Arlington. In addition, the potential of installing sidewalks on this road is unlikely due to the horizontal geometry and topography of the heavily traveled road.
- Flooding, due to low elevations along Belleville Turnpike, results in the frequent closure of Belleville Turnpike, hindering access to Barczewski Street at its intersection.
- Property is distant from both Kearny schools (nearest school is Schuyler Elementary School @ 1.25 miles away) and public recreational facilities, with no safe pedestrian access.
- Property is near the Keegan Landfill and high-tension electrical power lines.

**RESOLUTION ISSUING A DECISION ON THE  
SUITABILITY RECOMMENDATION AS REQUIRED BY THE  
NJMC EMERGENCY RESTRAINTS UPON FURTHER DEVELOPMENT  
FOR FILE NO. 07-594 NEBC/STORAGE SHED  
BLOCK 84, LOTS 3 and 4, IN THE BOROUGH OF CARLSTADT**

**WHEREAS**, in a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing; and

**WHEREAS**, on July 25, 2007, the Commission adopted Resolution No. 07-68, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing"; and

**WHEREAS**, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission," that will govern the review of and restraints upon applications for further development in the Meadowlands District; and

**WHEREAS**, the Guidelines govern all zoning certificate applications received on or after May 21, 2007 and remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first; and

**WHEREAS**, the Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use; and

**WHEREAS**, a zoning certificate application was submitted to the NJMC on September 12, 2007, by Victor Torsiello for the Northern Eagle Beverage Company, Inc., for the premises identified as 600 Sixteenth Street, Block 84, Lots 3 and 4, in the Borough of Carlstadt, New Jersey and which is located in the Light Industrial B zone; and

**WHEREAS**, the application proposes to construct a 2,400 square foot metal storage shed/warehouse, on the subject property, and as such, is not exempt from the Emergency Restraints; and



**WHEREAS**, the application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints; and

**WHEREAS**, a suitability review, dated October 18, 2007, and attached hereto, has been prepared, indicating the recommendation of the Review Team in this matter; and

**WHEREAS**, the suitability review recommends that the subject property is unsuitable for residential use; and

**WHEREAS**, the members of the NJMC have reviewed the suitability review and recommendation prepared by the Review Team, regarding the subject property; and

**WHEREAS**, the members of the NJMC concur with the recommendation of the Review Team; and

**WHEREAS**, the NJMC hereby determines that the subject property is unsuitable for residential use.

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the subject property located at Block 84, Lots 3 and 4, in the Borough of Carlstadt is unsuitable for residential use.

The foregoing was adopted on Commission vote.

---

Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-95

# Memorandum

P. 102

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert Ceberio, Executive Director

From: Ileana Kafrouni Date: October 24, 2007

Subject: Site Suitability Recommendation for Property at 600 16<sup>th</sup> St. in the Borough of Carlstadt

In a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing. The Commission followed up by adopting Resolution No. 07-68, on July 25, 2007, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing. Thereafter, on September 19, 2007, the Commission adopted Resolution No. 07-74, which approved Guidelines entitled, "Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission."

These Guidelines will govern the review of and restraints upon zoning certificate applications for further development in the Meadowlands District. The Guidelines apply to all zoning certificate applications received on or after May 21, 2007 and will remain in effect until the NJMC promulgates new regulations concerning affordable housing, or the Guidelines are withdrawn or rescinded by Commission action or court order, whichever occurs first. The Guidelines set forth the criteria for a Review Team, comprised of three NJMC staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, to review each zoning certificate application to determine the suitability of the subject site for residential use.

A zoning certificate application was submitted to the NJMC on August 2, 2007, by Victor Torsiello for the Northern Eagle Beverage Company, Inc., for the premises identified as 600 Sixteenth Street, Block 84, Lots 3 and 4, in the Borough of Carlstadt, New Jersey and which is located in the Light Industrial B zone. The application proposes the construction of a 2,400 square foot metal storage shed/warehouse on the subject property, and as such, is not exempt from the Emergency Restraints.

The application was forwarded to the Review Team for review of the application in accordance with the Emergency Restraints. A suitability review, dated October 18, 2007, has been prepared, indicating that the Review Team recommends that the subject property is unsuitable for residential use.

At this time, Staff is recommending that the members of the NJMC concur with the suitability recommendation prepared by the Review Team, regarding the subject property, which determines that the subject property is unsuitable for residential use.



File Information

File Number

07-594

File Name

NEBC/Storage Shed

Block

84

Address

600 Sixteenth Street

Lot

3

Town

Borough of Carlstadt

Engineer/Planner

RS

Plan Reviewer

Exemptions

Date Entered

09/19/07

09/19/07

Evaluated By

Sharon A. Mascaro

The following Zoning Certificate applications are exempt from the emergency restraints. If exempt, continue in accordance with N.J.A.C. 19:4-4. If not exempt, the application shall be referred to the Review Team.

- ☐ New residential building or addition limited to one or two market-rate dwelling units
- ☐ New building or addition by municipal, county, state, or federal government; or a utility, housing, or improvement authority
- ☐ Change of use within an existing structure that does not increase the occupancy load by 25 or more people (occupancy load determined by N.J.A.C. 5:94 Appendix E)
- ☐ Antennae
- ☐ Communications transmission towers
- ☐ Compactor pads
- ☐ Exterior equipment, HVAC systems
- ☐ Fences
- ☐ Fill/stockpile
- ☐ Recycling and/or refuse areas
- ☐ Signs
- ☐ Site improvements
- ☐ Tanks
- ☒ Not Exempt (Proceed to section 2. Review Team)

Date referred to review team: 09/19/07



**Review Team**

A team of three (3) NJMC staff members, one of whom shall be a license professional planner and one of whom shall be a licensed professional engineer ("Review Team") shall review each application for a zoning certificate and prepare a recommendation regarding the suitability of the subject property for affordable housing. The recommendation shall be forwarded to the Commission for final action.

**Site Suitability Review**

**Zone Designation**

a. Properties located in the following zones are deemed unsuitable for housing:

- ☐ Environmental Conservation Zone
- ☐ Parks and Recreation Zone
- ☐ Aviation Facilities Zone
- ☐ Public Utilities Zone

*Skip to section 6. Site Suitability Recommendation*

b. Properties located in the following zones are generally deemed unsuitable for housing. The subject property owner may, however, request that NJMC staff evaluate the site's suitability for housing. (If a request is received from property owner, skip to section 4. Site Characteristics)

- ☒ Light Industrial B Zone
- ☐ Intermodal A Zone
- ☐ Intermodal B Zone
- ☐ Heavy Industrial Zone

*Skip to section 6. Site Suitability Recommendation*

c. The subject property is located in the following zone or redevelopment area not listed above:

*Continue to section 4. Site Characteristics*



4. Site Characteristics

a. Size of property and associated buildable land

<input type="text"/>	-	<input type="text"/>	=	<input type="text"/>
Total Parcel Sq. Ft.		Portion constrained by improvements, wetlands, required open space, setbacks, easements or other constraints		Buildable Land

Describe Restraint:

b. Checking any of the following boxes deems the site unsuitable for housing:

- ☐ Contains less than 7,500 square feet of buildable land.
- ☐ Contains land uses (former and/or existing), either on the site or in the vicinity, which may expose residents to environmental hazards, unless the site is/has been remediated to NJDEP residential standards

Describe hazard(s) and indicate data source(s):

- ☐ The size, shape, or layout of any existing structures, or other physical limitation(s) not listed previously, precludes residential use.

Describe:

- ☐ The site does not meet applicable COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5.

- ☐ The application does not comply with pertinent wetland regulations.
- ☐ The site contains flood hazard constraints as defined in N.J.A.C. 7:13.
- ☐ The site is listed on the State or National Register of Historic Places.
- ☐ Adequate infrastructure, including utilities and/or roadways, is not available.

Describe COAH-related findings:

- ☐ The site is unsuitable for residential use pursuant to sound planning principles.

Describe:



5. Suitable Sites

☐ a. Application for residential use

i. Affordable units

Total units.....

Market rate units.....

Proposed affordable units.....

Required affordable units (20% of total)....

Additional units for accessory uses.....

Total required affordable units.....

☐ Meets minimum requirements for number of affordable units.  
*Skip to 5.a.ii*

☐ Does not meet minimum requirements for number of affordable units. Development shall not be permitted to proceed under the Emergency Restraints.

ii. Age-restricted housing

☐ The development contains age-restricted housing 25% or less of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Application shall proceed in accordance with procedures in N.J.A.C. 19:4-4.

☐ The development contains age-restricted housing in excess of 25% of the municipality's growth share obligation, calculated by N.J.A.C. 5:94-2. Development shall not be permitted to proceed under the Emergency Restraints.

☐ b. Application for non-residential use

Development shall be halted until new NJMC zoning regulations governing affordable housing become effective.



6 Site Suitability Recommendation

- ☐ **Suitable site**
- ☐ May proceed: Residential proposed with affordable housing
  - ☐ May not proceed
    - ☐ Residential proposed w/o affordable housing
    - ☐ Non-residential proposed
- ☒ **Unsuitable site:** May proceed w/ payment in lieu of construction or construction of affordable units off-site

**RESOLUTION AUTHORIZING THE EXECUTION OF  
A JUDICIAL CONSENT ORDER IN THE MATTER OF  
NEW JERSEY MEADOWLANDS COMMISSION AND THE STATE OF NEW  
JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION V.  
NEW YORK SUSQUEHANNA AND WESTERN RAILWAY CORPORATION,  
STEPHEN J. GUIDO, AND WESTSIDE TRANSLOAD, LLC, IN THE  
SUPERIOR COURT OF NEW JERSEY - HUDSON COUNTY,  
CHANCERY DIVISION, DOCKET NO. C-136-06**

**WHEREAS**, on July 21, 2006, the New Jersey Meadowlands Commission (NJMC) commenced the above action against The New York Susquehanna and Western Railway Corporation (NYS&W) seeking, among other things, injunctive relief to enforce a Stipulation of Settlement that had been adopted by the former HMDC; and

**WHEREAS**, the Court issued an order temporarily restraining construction at the facility and granting other relief, which order was continued through January 4, 2007, when, after the NJMC had the opportunity to review, comment upon and effect changes to engineering and design plans it was dissolved and a new order entered that ordered, among other things, that construction of the subject proposed solid waste transfer facility shall be subject to the Stipulation of Settlement and the facility shall not be operated unless it is in compliance with the Stipulation of Settlement; and

**WHEREAS**, on March 6, 2007 the NJMC and the New Jersey Department of Environmental Protection (NJDEP) filed an amended complaint seeking injunctive relief against Stephen J. Guido (Guido) and Westside Transload, LLC (Westside) similar to the injunctive relief sought against the NYS&W and to subject Westside, Guido and others to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (SWMA) and regulations promulgated thereunder; and

**WHEREAS**, in connection with a desire by the parties to resolve the lawsuit, the parties have drafted the attached, proposed Judicial Consent Order.

**NOW, THEREFORE, BE IT RESOLVED** that the NJMC hereby authorizes the execution of the attached Judicial Consent Order.



The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-96

# Memorandum

P. 110

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert Ceberio, Executive Director

From: Christine A. Sanz Date: October 24, 2007

Subject: Judicial Consent Order in NJMC v. NYS&W

On July 21, 2006, the New Jersey Meadowlands Commission (NJMC) commenced legal action against The New York Susquehanna and Western Railway Corporation (NYS&W) in connection with the construction of a solid waste transfer facility located on its property located at 43<sup>rd</sup> Street in North Bergen, New Jersey. The NJMC sought, and was granted by the Court, injunctive relief restraining construction of the facility through January 4, 2007. During that period, NJMC had the opportunity to review, comment upon and effect necessary changes to engineering and design plans for the facility and an order was entered that provided that the construction of the facility be subject to an earlier Stipulation of Settlement entered into between the NYS&W and the former HMDC and that the facility shall not be operated unless it is in compliance with the Stipulation of Settlement. Thereafter, on March 6, 2007, the NJMC and the New Jersey Department of Environmental Protection (NJDEP) filed an amended complaint seeking injunctive relief against two new defendants, Westside Transload, LLC and Stephen J. Guido, the so-called shipper at the proposed facility and seeking to subject these defendants to the Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.* and certain regulations promulgated thereunder.

In connection with a desire by the parties to resolve the above lawsuit, the parties drafted the attached Judicial Consent Order, pursuant to which, among other things, Westside Transload, LLC apply for inclusion in the New Jersey Meadowlands Commission Solid Waste Management Plan and for a solid waste facility permit from the NJDEP. Accordingly, the staff respectfully requests that the NJMC authorize the execution of the attached Judicial Consent Order.

defendant Westside Transload, LLC, dated January 5, 2006 ("Contract"), a truck-to-rail facility (the "Facility") currently being constructed at the Property; and

WHEREAS, Defendant Westside Transload, LLC ("Westside") is a New Jersey limited liability company with offices at 5600 Westside Avenue, North Bergen, Hudson County, New Jersey 07047. Westside is a party to the Contract, pursuant to which Westside is to be the shipper at the Facility; and

WHEREAS, Defendant Stephen J. Guido ("Guido"), a resident of the State of New Jersey, is the Chief Executive Officer, President, Manager, and a Member of Westside; and

WHEREAS, the Facility is currently under construction and is not yet operational; and

WHEREAS, on or about July 21, 2006, Plaintiff NJMC commenced this action against NYS&W seeking, among other things, injunctive relief to enforce a Stipulation of Settlement ("Stipulation") that had been adopted as a final agency order by the Hackensack Meadowlands Development Commission (now known as the New Jersey Meadowlands Commission ("NJMC")). The Court issued an order temporarily restraining construction at the Facility and granting other relief, which order was continued through January 4, 2007, when, after the NJMC had the opportunity to review, comment upon and effect changes to engineering and design plans for the Facility, it was dissolved and a new order entered which

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NEW JERSEY MEADOWLANDS : SUPERIOR COURT OF NEW JERSEY -  
COMMISSION AND STATE OF NEW : HUDSON COUNTY  
JERSEY, DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION, : CHANCERY DIVISION

DOCKET NO. C-136-06

 $\Delta$ 

NEW YORK SUSQUEHANNA AND  
WESTERN RAILWAY CORPORATION,  
STEPHEN J. GUIDO, AND  
WESTSIDE TRANSLOAD, LLC,

Defendants.

WHEREAS, Defendant The New York, Susquehanna and Western Railway Corporation ("NYS&W"), a corporation with offices at One Railroad Avenue, Cooperstown, New York 13326, is an interstate rail carrier and owns certain real property located at 43<sup>rd</sup> Street (Block 481, Lot 1), North Bergen, Hudson County, New Jersey (the "Property"). Pursuant to an Amended and Restated Rail Loading and Transportation Contract between NYS&W and

provided, among other things, that (a) "Construction of the Facility shall be subject to the March 2001 Stipulation of Settlement entered into between the NYS&W and the NJMC ("Stipulation")," and (b) "The Facility shall not be operated unless it is in compliance with the Stipulation, including all fire, health, plumbing, safety and construction regulations, as applicable"; and

WHEREAS, on or about March 6, 2007, NJMC and the New Jersey Department of Environmental Protection (the "DEP") filed an amended complaint in this action seeking (1) injunctive relief against Westside and Guido similar to the injunctive relief sought against the NYS&W, and (2) to subject Westside, Guido and others to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. ("SWMA") and certain regulations promulgated thereunder that apply only to non-rail carrier solid waste facilities (collectively with the claims against NYS&W, the "Lawsuit"); and

WHEREAS, in connection with a desire by the parties to resolve the Lawsuit, and as provided in this Judicial Consent Order, Westside and NYS&W, conditioned and effective upon Westside obtaining a solid waste facility permit pursuant to the SWMA, have agreed to terminate the Contract and enter into a lease of a portion of the Property and the Facility from the NYS&W to Westside; and

WHEREAS, in the event that Westside leases a portion of the

Property and operates the Facility, the Facility will be a "solid waste facility" as defined in the SWMA and will lie in the Hackensack Meadowlands District ("HMD"), which is a solid waste management planning district, and in connection therewith, Westside will be engaged in the collection and disposal of solid waste; and

WHEREAS, pursuant to the SWMA, any solid waste facility operated by Westside must obtain approval from the DEP prior to the construction, acquisition or operation of any solid waste facility in any solid waste management district, and pursuant to N.J.A.C. 7:26-2.1 et seq., any solid waste facility operated by Westside must be included in the district plan and be constructed and operated in accordance with the SWMA and its operational standards and implementing regulations; and

WHEREAS, prior to Westside's commencing any solid waste facility operations, a proposed operator of such a facility is required to obtain A-901 approval pursuant to N.J.S.A. 13:1E-126 et seq. (commonly referred to as "A-901" approval); and

WHEREAS, DEP, NJMC, Westside and Guido desire to agree upon a timeframe for applications to be submitted by Westside and acted upon by DEP and NJMC for (a) the Facility to be included in the solid waste management plan of the NJMC, (b) Westside to obtain a registration statement and engineering design approval from DEP for operation of the Facility, and (c) Westside to

obtain approval under the A-901 program to operate the Facility;  
and

WHEREAS, DEP, NJMC, and Defendants have agreed to  
settle this Lawsuit in accordance with the following terms.

NOW, THEREFORE, ON THIS \_\_\_\_\_ DAY OF OCTOBER, 2007, IT IS

**HEREBY ORDERED THAT:**

1. On or before October 26, 2007, Westside shall apply for  
an amendment to the NJMC Solid Waste Management Plan  
("Plan Amendment") to include the Facility in the NJMC  
Solid Waste Management Plan to handle up to 1,500 tons  
of Type 13, 13C, 23, and 27 (exclusive of contaminated  
soil, which shall be defined for purposes of this JCO  
as soil contaminated with petroleum products, PCBs,  
dioxins, other chemical wastes, pesticides or similar  
substances at a level above residential cleanup  
standards) solid waste per day ("Plan Inclusion").  
Notwithstanding the foregoing, the application for Plan  
Inclusion shall seek authorization to commence  
operations at 1,000 tons per day, scaling up to 1,500  
tons per day in 250 tons per day increments at the six  
and twelve month anniversary of the commencement of  
operations of the Facility provided that Westside shall  
have submitted evidence to DEP and the NJMC, and DEP  
and the NJMC agree, that it is in material compliance

with all applicable laws and regulations regarding the  
operation of the Facility. The application shall  
include a map and/or survey delineating the boundaries  
of the Property on which the Facility will be located.  
NJMC acknowledges that (a) the construction and  
operation of the Facility do not conform to the  
permitted uses applicable to the Property, and (b) the  
construction of the Facility is not in compliance with  
certain set-back and other zoning requirements. NJMC  
further acknowledges that such use and set-back  
requirements will not be a basis upon which NJMC will  
reject or delay Westside's application for Plan  
Inclusion. NJMC agrees to deliver any notice of  
deficiency or request for additional information with  
respect to the Plan Inclusion application to Westside  
by facsimile and regular mail.

2. On or before October 26, 2007, Westside shall submit an  
administratively complete application for A-901  
approval to operate the Facility. The application for  
A-901 approval shall be submitted to the New Jersey  
Division of Law, Attn: DAG Harley Williams. The New  
Jersey Division of Law agrees to use best efforts to  
promptly and expeditiously process the A-901  
application.

3. On or before October 26, 2007, Westside shall submit an administratively complete application (except for Plan Inclusion and A-901 approval) to the DEP for approval of a registration statement and engineering design to construct and operate the Facility to handle up to 1,500 tons of Type 13, 13C, 23 and 27 (exclusive of contaminated soil) solid waste per day pursuant to the requirements of the SWMA, including but not limited to N.J.S.A. 13:1E-5, and its implementing regulations, N.J.A.C. 7:26-1.1 et seq., specifically including but not limited to N.J.A.C. 7:26-2.1 et seq. (this approval of a registration statement and engineering design will be referred to herein as the "Permit" and the application as the "Permit Application"). The Plan Amendment and Permit Application shall include provisions for an inbound and outbound scale to be used by the Facility. The Permit Application shall contain, or be accompanied by, an application for an appropriate permit or permits for construction and operation of equipment and control apparatus at the Facility, pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and its implementing regulations, the grant of which air permit Westside acknowledges is a prerequisite to grant of the Permit. DEP acknowledges

that it is in receipt of a submission from the NYS&W addressing air pollution control for the Facility that was submitted by NYS&W in connection with the lawsuit ("Air Submission"). Westside shall, on or before October 26, 2007, submit the necessary information to DEP so that the Air Submission may be converted to an application by Westside without loss of review time. Westside agrees that it will not make any material modifications to the Air Submission without DEP's express authorization. The specific mention of these requirements with respect to the scale and air pollution control equipment and apparatus in connection with the Plan Amendment and Permit Application is without prejudice to any other requirements imposed by or arising under other applicable environmental statutes.

4. Notwithstanding the fact that at the time the Plan Inclusion application is made Westside (as the proposed operator of the Facility) will not yet have obtained A-901 approval, the NJMC nevertheless agrees to use best efforts to promptly process the Plan Inclusion application generally in accordance with the Schedule attached as **Exhibit 1**. NJMC agrees to review an administratively complete Plan Inclusion application on

an expedited basis and to make best efforts to take final action on the proposed Plan Inclusion on or before May 7, 2008, subject to Paragraph 5 below. DEP represents that upon receipt of a proposed amendment to the NJMC Solid Waste Management Plan regarding the Facility, it will make best efforts to act on such amendment on or before June 30, 2008, subject to Paragraph 5 below. DEP further represents that it will make best efforts to act on the Air Permit Application on or before June 20, 2008.

5. Notwithstanding the fact that at the time the Permit Application is made the Facility will not then be included in the NJMC Solid Waste Management Plan, and Westside will not yet have obtained A-901 approval, DEP nevertheless agrees to use best efforts to expeditiously process the solid waste facility Permit Application generally in accordance with the Schedule attached as **Exhibit 1** and to use best efforts to finish its review and take final action on the Permit Application on or before June 30, 2008. Westside acknowledges that no Permit may issue unless and until (a) the Facility is included in the NJMC Solid Waste Management Plan, and (b) Westside has received A-901 approval to operate the Facility. Such undertaking by

the DEP is contingent upon Westside submitting an administratively complete application (except for Plan Inclusion and A-901 approval), pursuant to Paragraph 3 above, on or before October 26, 2007, and fully responsive replies to any request by the DEP for additional information relating to the application within ten (10) days of any notice of deficiency or request for additional information issued by the DEP. The time for DEP review of the Permit Application (i.e., the outside date of June 30, 2008) shall be tolled for every day that Westside is late in any of these respects. It is the intention of the parties that if reasonably possible, final action by DEP and the NJMC on the Permit Application, Plan Inclusion application and A-901 authorization will be taken by June 30, 2008, and that if Westside and the Facility obtain the necessary Permit, Plan Inclusion, and A-901 authorization, operation of the Facility by Westside may commence when the Permit is issued and a post-Permit certification of construction is submitted by Westside to, and approved by, the Department in accordance with Paragraph 13.

6. If DEP issues a notice of deficiency or request for additional information, DEP agrees to participate in a

submitted by Westside to the NJMC and DEP as part of Westside's application for Plan Inclusion and the Permit. Should DEP or the NJMC determine that either or both need to review some or all of the redacted confidential business information, NJMC and DEP agree to limit their request for such information to the extent necessary for review of the Plan Inclusion Application, and/or the Permit, and to maintain the confidentiality of such information to the extent permitted by law. The DEP and the NJMC reserve their right to challenge the designation of any business information as confidential. The NYS&W agrees to submit information if required pursuant to A-901 but in the event of such demand, reserves all of its rights. No such submission by the NYS&W shall be deemed to derogate from NYS&W's rights as provided by Paragraphs 14, 16 and 17 below.

9. In connection with the Facility, Westside shall comply with N.J.S.A. 13:1E-28.1 et seq., including but not limited to negotiating, and then paying, a host community benefit to the Township of North Bergen. North Bergen shall be a third party beneficiary of this provision, with standing to seek its enforcement against Westside.

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meeting with Westside and its engineers or other appropriate professionals within seven (7) business days following receipt of such notice of deficiency or request for additional information for the purpose of discussing the notice of deficiency or request for additional information and potential acceptable resolutions of the notice of deficiency or request for additional information. DEP agrees to deliver any notice of deficiency or request for additional information to Westside by facsimile and regular mail. Westside will pay all fees mandated by statutory and regulatory requirements including Plan Inclusion, Permit Application and request for A-901 approval. The Permit fee shall be paid at the time of submission of the Permit Application.

8. In connection with this JCO, NYS&W and Westside agree that they will enter into a lease agreement on or before October 26, 2007 allowing Westside, if Westside obtains Plan Inclusion, A-901 approval and the Permit, to use a portion of the Property for the operation of the Facility as a solid waste transfer facility subject to the terms of such lease agreement, and NYS&W understands that such lease agreement, with confidential business information redacted, will be

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10. Guido and Westside agree to refrain from operating the Facility until and unless (a) the Facility is included in the NJMC Solid Waste Management Plan, (b) Westside has received A-901 approval to operate the Facility, (c) a Permit has been issued by the DEP to Westside to operate the Facility, and (d) a certificate of occupancy has been issued by the Township of North Bergen for the Facility. Should any of these approvals not issue, Westside agrees that it will not be the operator of the Facility until and unless authorized to do so by this Court, or until all of the above approvals have issued. NJMC agrees to provide the Township of North Bergen with copies of inspection reports and other documents as may be requested by the Township of North Bergen in connection with any application by Westside for building permits or a certificate of occupancy for the Facility.

11. NYS&W agrees to refrain from operating the Facility prior to (a) June 30, 2008, or (b) such earlier date if the stay of the Lawsuit is vacated pursuant to Paragraph 14 of this JCO. If the time for DEP review of the Permit Application (i.e., the outside date of June 30, 2008) is tolled pursuant to Paragraph 5 beyond June 30, 2008, however, NYS&W agrees to refrain from

operating the Facility until the earlier of (a) June 30, 2008 plus the number of days tolled pursuant to Paragraph 5, or (b) July 31, 2008. If final action cannot be taken by July 31, 2008 because of the tolling provisions of Paragraph 5, then all parties, NJDEP, NJMC, NYS&W, Westside and Guido, agree to meet by August 15, 2008 in an attempt to resolve, in good faith, a new outside date by which final agency action pursuant to this JCO may be taken. If no resolution is reached, NYS&W will have the right to proceed with the construction and operation of the Facility in accordance with the January 22, 2007 order of this Court. Prior to initiation of such construction and operation, NYS&W shall give two weeks' notice of such intent to DEP and the NJMC by fax and e-mail through designated trial counsel for DEP and the NJMC, and in that event, DEP and/or the NJMC may seek a continuation of this stay on an expedited basis. Defendants may oppose such a stay.

12. All of Westside's operations at the Facility shall be conducted in accordance with the Permit, the provisions of the SWMA and its implementing regulations including but not limited to N.J.A.C. 7:26-2.1 et seq., other applicable environmental law including but not limited

to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. ("APCA"), and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA"), and shall be subject to all of DEP's statutory and regulatory powers, including but not limited to the power to order compliance and assess penalties for violations of environmental statute(s) or regulation(s). Westside and Guido expressly agree that upon inclusion of the Facility in the NJMC Solid Waste Management Plan, receipt by Westside of A-901 approval, and issuance by the DEP of a Permit to Westside to operate the Facility, DEP's regulatory powers with respect to Westside and its operation of the Facility are not, and shall not be deemed to be, preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §§ 10101 et seq. It is acknowledged and agreed by DEP and NJMC that this JCO does not apply in any way to any other facility owned or leased by NYS&W and operated, or allegedly operated, by NYS&W or its successors, assigns, affiliates, agents, or contractors.

13. Westside and Guido hereby agree that if and when a Permit is issued, the operation of the Facility by Westside will be and will constitute a regulated

facility subject to full regulation under the SWMA. Westside and Guido agree that Westside will not commence operation of the Facility until a post-Permit certification of construction is submitted by Westside to, and approved by, the Department. DEP agrees to review and act upon any such certification within ten (10) days of receipt.

14. The parties agree that the Lawsuit is stayed subject to this Paragraph 14.

a. If the Plan Inclusion application, the Permit Application or the application for A-901 approval is denied in a final agency determination on or before June 30, 2008, or such later date as agreed upon in Paragraph 11 if the provisions of Paragraph 11 come into effect, NYS&W will have the right to proceed with the construction and operation of the Facility in accordance with the January 22, 2007 order of this Court. Prior to initiation of such construction and operation, NYS&W shall give two weeks' notice of such intent to DEP and the NJMC by fax and e-mail through designated trial counsel for DEP and the NJMC, and in that event, DEP and/or the NJMC may seek a continuation of this stay on an expedited basis. Defendants may oppose such a stay.

b. If no final decision on the Plan Inclusion application, the Permit Application and the application for A-901 approval is rendered on or before June 30, 2008, or such later date as agreed upon in Paragraph 11 if the provisions of Paragraph 11 come into effect, the NYS&W will have the right to proceed with the construction and operation of the Facility in accordance with the January 22, 2007 order of this Court. Prior to initiation of such construction and operation, NYS&W shall give two weeks' notice of such intent to DEP and the NJMC by fax and e-mail through designated trial counsel for DEP and the NJMC, and in that event, DEP and/or the NJMC may seek a continuation of this stay on an expedited basis. Defendants may oppose such a stay.

c. Any party may, for good cause shown, apply at any time to the Court for an order vacating this stay or other relief, including but not limited to material violation(s) of this JCO and/or a determination that DEP and/or the NJMC will not, as a result of regulatory or statutory requirements, be able to issue to Westside an A-901 approval, the Facility a Permit or include the Facility in the NJMC solid waste plan on or before June 30, 2008, or such later date as agreed upon in Paragraph 11 if the provisions of Paragraph 11 come

into effect.

d. If a Permit is issued to Westside with respect to the Facility, the Lawsuit shall, upon application of any party, be dismissed with prejudice.

e. The January 22, 2007 order of this Court authorizing the continued construction of the Facility and the right of the NJMC to monitor and inspect such construction of the Facility to ensure compliance with the Stipulation, shall remain in effect until the earlier of (i) further order of the Court, or (ii) dismissal of the Lawsuit with prejudice. With respect to the continued construction of the Facility pursuant to the January 22, 2007 order of this Court, DEP and the NJMC acknowledge and agree that pursuant to the lease agreement, the NYS&W will delegate the performance of the construction of the Facility to Westside pursuant to the lease agreement between NYS&W and Westside and such delegation is in compliance with the January 22, 2007 order of this Court. Westside acknowledges and agrees that all such construction performed by Westside pursuant to such delegation shall be in accordance with the Permit as ultimately issued, and Westside acknowledges that any such construction performed by it prior to issuance of a Permit shall be

at Westside's risk should such construction not conform to the Permit as issued. DEP and NJMC agree that (i) Westside's (including its officers, directors, members and managers) construction of the Facility pursuant to such delegation shall not, in and of itself, subject to the terms and conditions contained in this JCO, be a violation of the SWMA or the HMRDA, and (ii) nothing in this JCO shall limit NYS&W's right to construct the Facility pursuant to the January 22, 2007 order of this Court.

f. NJMC and DEP acknowledge that if the Plan Inclusion application, the A-901 application or the Permit Application for the Facility to handle up to 1,500 tons of Type 13, 13C, 23, and 27 (exclusive of contaminated soil) solid waste per day are not fully approved and issued on or before June 30, 2008, or such later date as agreed upon in Paragraph 11 if the provisions of Paragraph 11 come into effect, NYS&W will have the right to proceed with the construction and operation of the Facility in accordance with the January 22, 2007 order of this Court and subject to any claims that NJMC and DEP may have against NYS&W, Westside and/or Guido in the Lawsuit. Prior to initiation of such construction and operation, NYS&W shall give two weeks'

notice of such intent to DEP and the NJMC by fax and e-mail through designated trial counsel for DEP and the NJMC, and in that event, DEP and/or the NJMC may seek a continuance of this stay on an expedited basis. Defendants may oppose such a stay. Nothing in this JCO, Westside's Plan Inclusion application, Westside's A-901 application to operate the Facility or Westside's Permit Application, or any response by DEP or the NJMC to those documents (i) may be used against any party to this JCO in the Lawsuit; (ii) may be used against NYS&W in any other administrative or regulatory proceeding to which the NYS&W is a party and which directly involves the issue of federal preemption, or (iii) shall be deemed an admission by the NYS&W, Westside or Guido. However, any party may use any of the foregoing documents, or responses thereto (i) to rebut a material factual claim which reasonably appears to be contradicted by any of the foregoing documents, or responses by DEP or the NJMC thereto; or (ii) when the Court determines that the interests of justice mandate use of such documents or responses thereto. None of the parties hereto waives any rights to assert any and all defenses or make any claims in the Lawsuit.

15. All discovery and other matters subject to the Case

Management Orders dated July 2, September 14, and

October 4, 2007, in this case are specifically stayed

and this JCO in no way constitutes a waiver of any

claims of deficiency or right to seek a protective

order or to compel additional discovery existing at the

time this JCO is signed by the Court.

16. Nothing in this JCO, Westside's Plan Inclusion

application, Westside's Permit Application, Westside's

A-901 application, any approvals of such applications

or any actions or inaction pursuant to those approvals

shall be construed:

a. to be an admission by the NYS&W that the operation of

the Facility by NYS&W, its successors, assigns,

affiliates, agents, or contractors is other

than transportation by a rail carrier nor a waiver of

any claim or defense by the NYS&W in the Lawsuit or any

other matter that the NJMC's, the DEP's or any other

state, county or local government or governmental

entity's regulatory powers are preempted by federal

law;

b. to require NYS&W, its successors, assigns, affiliates,

agents, or contractors to obtain inclusion in any solid

waste management plan, A-901 approval, or to obtain any

other NJDEP, NMJC, or any other state, county or local

government or governmental entity approval to operate  
the Facility or any other transload facility;

c. to require NYS&W, its successors, assigns, affiliates,  
agents, or contractors to operate the Facility in the  
same manner as Westside operates the Facility.

17. If Westside obtains the Permit referenced in this JCO,  
and thereafter Westside or any successor to Westside  
ceases operations at the Facility, and NYS&W assumes  
operational control of the Facility, then nothing in  
this JCO shall be construed to prevent NYS&W, its  
successors, assigns, affiliates, agents or contractors  
from operating the Facility or from asserting at that  
time and thereafter that the NJMC's, the DEP's or any  
other state, county or local government or governmental  
entity's regulatory powers are preempted by federal  
law.

#### GENERAL PROVISIONS

18. DEP and NJMC acknowledge that prior to the date of this  
JCO, they have engaged in (i) substantial review of  
various engineering and other documents and studies  
regarding the Facility, and (ii) ongoing inspections of  
the construction of the Facility. DEP and NJMC further  
represent to Westside and Guido that as of the date of  
this JCO, neither the DEP nor the NJMC is aware of any

facts or other information that would prevent the inclusion of the Facility in the NJMC Solid Waste Management Plan to handle up to 1,500 tons of Type 13, 13C, 23, and 27 (exclusive of contaminated soil) solid waste per day, the issuance of an A-901 approval to Westside, and issuance of a Permit to Westside to operate the Facility to handle up to 1,500 tons of Type 13, 13C, 23, and 27 (exclusive of contaminated soil) solid waste per day.

19. The parties agree not to contest the authority or jurisdiction of the Court to enter this JCO. The parties further agree not to contest the terms or conditions, or the enforceability of this JCO, except as to interpretation of such terms and conditions, in any action brought by any party to enforce the provisions of this JCO.

20. Westside and Guido shall not construe any informal advice, guidance, suggestions or comments by DEP or the NJMC, or by any person acting on behalf of DEP or the NJMC, as relieving Westside and Guido of its or his obligation to obtain written approvals as may be required herein or otherwise by law, unless such advice, guidance, suggestions, or comments by DEP and/or the NJMC are submitted in writing to such

Defendant through a Deputy Attorney General specifically relieving Defendant(s) of a specified obligation.

21. In addition to DEP's and NJMC's statutory and regulatory rights to enter and inspect in accordance with, among others, the provisions of N.J.S.A. 13:1D-9(d), N.J.S.A. 13:1E-9(a), and N.J.S.A. 13:17-6(f), and without prejudice to any position any Defendant may take in the event the Permit is not issued to Westside for the Facility, Defendants shall allow DEP, the NJMC, and their authorized representatives access to the Facility for the purpose of determining compliance with this JCO, the Stipulation, and applicable environmental law. Westside and Guido shall allow the NJMC and its authorized representatives access to the Facility for the purpose of determining compliance with the HMRDA. NYS&W and the NJMC reserve their respective rights and positions with respect to application of the HMRDA to NYS&W, except that NYS&W agrees to provide access to the Property to NJMC and its authorized representatives pursuant to the Stipulation and as otherwise authorized by law.

22. Westside shall give written notice of this JCO to its successor in interest prior to its transfer of

- ownership or any other interest, including but not limited to leasehold or arising under the Contract, of the Facility which is the subject of this JCO, and shall simultaneously provide proof to DEP and the NJMC that such notice has been given.
23. DEP and the NJMC reserve all statutory and common law rights to require Defendants to take additional remedial action should either determine that such action is necessary to protect human health, welfare, animal or plant life, or property or to prevent unreasonable interference with the enjoyment of life or property. Nothing in this JCO shall constitute a waiver of any statutory or common law right of DEP or the NJMC to require Defendants to undertake such additional measures should DEP or the NJMC determine that such remedial measures are necessary. Defendants reserve all defenses to any and all such claims.
24. This JCO shall not be construed to affect or waive the claims of Federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources.
25. Nothing in this JCO shall be construed to legalize activity which would otherwise be in violation of local, county, state, or federal law.
26. Nothing in this JCO shall be construed to relieve Westside and Guido of their obligations to construct the Facility in conformance with environmental laws, including but not limited to the APCA and the WPCA and their implementing regulations, and DEP and NJMC reserve their rights to seek appropriate relief and/or assess civil penalties for violations of same. NJMC and DEP reserve their rights to seek to enforce the HMRDA and applicable environmental law against the NYS&W; and the NYS&W reserves any and all defenses thereto.
27. Except as otherwise provided for herein, nothing in this JCO shall be construed to preclude DEP and NJMC from asserting that the construction and/or operation of the Facility is in violation of the SWMA, the APCA, the WPCA and/or their implementing regulations, or from asserting that the construction and/or operation of the Facility is in violation of the January 22, 2007 order of the Court.
28. Nothing in this JCO shall be construed to relieve Defendants from complying with any measures or actions that may be required by any future changes in the law, whether by statute, regulation or judicial determination. Nothing in this JCO shall be construed

to impose compliance by the Defendants with any measures or actions that may no longer be required, in whole or in part, by any future changes in the law, whether by statute, regulation or judicial determination. NYS&W's right to proceed with construction and operation of the Facility under Paragraphs 11 and 14 of this JCO in accordance with January 22, 2007 Order of the Court in no way relieves NYS&W of any obligation to comply with all requirements as applicable to NYS&W pursuant to any future changes in the law, or obligates NYS&W to comply with any requirements that may no longer be applicable to NYS&W pursuant to any future changes in the law. Moreover, nothing in this JCO shall be construed as a waiver by NJDEP or NJMC to enforce such requirements or a waiver by the Defendants of any defenses to such enforcement. Defendants reserve their rights to raise any defenses thereto.

29. If any provision of this JCO or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this JCO or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby

and each provision of this JCO shall be valid and enforced to the fullest extent permitted by law.  
30. This JCO shall be effective upon signature by the Court.

Date: October , 2007

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Honorable Thomas P. Olivieri, P. J. Ch.



Plaintiff Department of Environmental Protection consents to the  
form and entry of the within order.

Date: October , 2007

Anne Milgram  
Attorney General of New Jersey  
Attorney for Department of  
Environmental Protection and  
New Jersey Meadowlands  
Commission

By: Kevin Auerbacher  
Deputy Attorney General

Plaintiff New Jersey Meadowlands Commission consents to the form  
and entry of the within order.

Date: October , 2007

Anne Milgram  
Attorney General of New Jersey  
Attorney for Department of  
Environmental Protection and  
New Jersey Meadowlands  
Commission

By: Kevin Auerbacher  
Deputy Attorney General

Defendant The New York, Susquehanna and Western Railway  
Corporation consents to the form and entry of the within order.

Date: October , 2007

Attorney for The New York, Susquehanna  
and Western Railway Corporation

Wolff & Samson PC

By: John A. McKinney, Jr., Esq.

Defendant Stephen J. Guido consents to the form and entry of the  
within order.

Date: October , 2007

Attorney for Stephen J. Guido

Budd Larner, P.C.

By: James F. Fitzsimmons, Esq.

Defendant Westside Transload, LLC, consents to the form and entry  
of the within order.

Date: October , 2007

Attorney for Westside Transload, LLC

Budd Larner, P.C.

By: James F. Fitzsimmons, Esq.

## Exhibit 1

## Solid Waste Facility Permit Application

A-901 Application	
Action	Timeline
1. A-901 Application for Westside Transload, LLC	October 26, 2007.
2. Second Level Business Consent Disclosures	October 26, 2007.
3. Issuance/Rejection of A-901 Application	[TBD]

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Action	Timeline
1. Fees Required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.	October 26, 2007
2. Documentation establishing that the facility has been included in the applicable district solid waste management plan.	Per JCO, to be processed simultaneously with Permit Application and submitted upon receipt. See Plan Inclusion timeline below.
3. The disclosure statement described in N.J.A.C. 7:26-16.	Per JCO, to be processed simultaneously with Permit Application and submitted upon receipt. See A-901 timeline below.
4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8.	October 26, 2007. DEP and NJMC agree to refrain from seeking to enforce N.J.A.C. 7:26-2.8(e), (f), (g), (i), (j), (m), or (n) until such time as an application for a Permit shall have been rejected.
5. An EHS prepared in accordance with N.J.A.C. 7:26-2.8.	October 26, 2007.
6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10.	October 26, 2007.
7. N.J.A.C. 7:26-2.4(g)(6), (7) and (8)	Application documents should be made available to interested parties and the public by _____. [TBD]
8. N.J.A.C. 7:26-2.4(g)(10) – Publication in the DEP Bulletin	_____. [TBD]
9. N.J.A.C. 7:26-2.4(g)(11) – notice of technically complete application.	_____. [TBD]
10. N.J.A.C. 7:26-2.4(g)(12) – tentative approval.	_____. [TBD]
11. N.J.A.C. 7:26-2.4(g)(13) – public hearing notice publication.	_____. [TBD]
12. N.J.A.C. 7:26-2.4(g)(13) – public hearing	_____. [TBD]
13. N.J.A.C. 7:26-2.4(g)(14) – public comment period closes	_____. [TBD]
11. N.J.A.C. 7:26-2.4(g)(21) – notification of grant or rejection of Permit Application.	June 30, 2008.

## NJMC Solid Waste Plan Inclusion

Action	Timeline
1. Submission of Complete Application for Plan Inclusion	October 26, 2007.
2. Public Hearing	_____. [TBD]
3. Submission of Findings of Hearing and Recommendation and Resolution	_____. [TBD]
4. Submission of Recommendation by NJMC to DEP	_____. [TBD]
4. Certification of Plan Amendment by NJDEP	_____. [TBD]

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A  
SETTLEMENT AGREEMENT WITH UNITED SHOWCASE/MARK JAMESON  
CONTRACTORS INC. TO RESOLVE  
OAL DOCKET NO. HMD-03075-2007**

**WHEREAS**, Mark Jameson Contractors Inc. ("Petitioner") is a tenant at property located at 114 Moonachie Avenue, Moonachie, New Jersey ("the Property"); and

**WHEREAS**, The Property is owned by United Showcase, Inc. ("Showcase") and is located in what is known as the Light Industrial B zone of the Meadowlands District; and

**WHEREAS**, Showcase has manufactured components used in Petitioner's chimney business. In the past, finished goods were stored at the Property and constituted inventory that Petitioner would use on an as-needed bases; and

**WHEREAS**, prior to December 1, 2006, the previous tenant vacated the Property and Petitioner and Showcase determined it would be in their mutual best interests for Petitioner to rent 5,000 square feet of space at the Property for storage of goods and sundry items such as loose brick and mortar sometimes needed for Petitioner to effectuate emergency chimney repairs referred on off-hours by PSE&G; and

**WHEREAS**, on December 1, 2006, Respondent, New Jersey Meadowlands Commission ("NJMC"), conducted an inspection of the Property and concluded that Petitioner was occupying space on the Property without benefit of NJMC approval or permit; and

**WHEREAS**, on December 1, 2006, the NJMC issued a Notice of Violation ("NOV") ordering Petitioner to file an application within fifteen (15) days of the NOV; and

**WHEREAS**, on December 13, 2006, Petitioner submitted an application for an occupancy certificate to the NJMC for a warehouse use; and

**WHEREAS**, on December 28, 2007, the NJMC conducted an inspection of the Property; and

**WHEREAS**, on January 16, 2007, based on the inspection, the NJMC advised that it determined that the conversion of the Property from a photography studio into a contractor's yard was made without benefit of NJMC approval in violation of N.J.A.C. 19:4-4.2, which states that no change of use shall take place without first obtaining a zoning certificate from the NJMC. The NJMC advised Petitioner that in accordance with N.J.A.C. 19:4-5.80(a), a contractor's yard or facility is not listed as a permitted use in the Light Industrial B zone; and

**WHEREAS**, on January 25, 2007, Petitioner submitted a Notice of Appeal ("Appeal") to the NJMC regarding the NOV dated January 16, 2007

**WHEREAS**, Petitioner states that the pallet of bricks and bags of mortar observed outside during the NJMC inspection were from a delivery and that bricks and mortar will be forever stored inside the premises; and

**WHEREAS**, Petitioner states that it has no intention to store any goods, materials or supplies in any other location other than the internal 5,000 square feet of leased space and represents that no outside storage of goods, materials or supplies will occur in the future; and

**WHEREAS**, based on the above, the parties have decided to amicably resolved the matter in dispute between them and have reached a mutually satisfactory agreement as to its disposition; and

**WHEREAS**, the Commission has reviewed this matter and the proposed Settlement Agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director is authorized to execute a Settlement Agreement with United Showcase/Mark Jameson Contractors, Inc. to conclude the matter on appeal before the Office of Administrative Law.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

# Memorandum

P. 130

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Christine Sanz Date: October 24, 2007

Subject: United Showcase-Jameson Settlement

Mark Jameson Contractors Inc. ("Jameson") is a tenant at property located at 114 Moonachie Avenue, Moonachie ("the Property"), which is owned by United Showcase, Inc. ("Showcase") and is located in the Light Industrial B zone. On December 1, 2006, the NJMC conducted an inspection of the Property and concluded that Jameson was occupying space on the Property without benefit of NJMC approval or permit and thereafter issued a Notice of Violation ("NOV") ordering Jameson to file an application within fifteen (15) days of the NOV.

On December 13, 2006, Jameson submitted an application for an occupancy certificate to the NJMC for a warehouse use and on December 28, 2007, the NJMC conducted an inspection of the Property. On January 16, 2007, based on the inspection, the NJMC issued a letter indicating that the conversion of the Property from a photography studio into what was determined to be a contractor's yard, was made without benefit of NJMC approval in violation of N.J.A.C. 19:4-4.2. Further, the NJMC advised Jameson that in accordance with N.J.A.C. 19:4-5.80(a), a contractor's yard or facility is not listed as a permitted use in the Light Industrial B zone.

On January 25, 2007, Jameson submitted a Notice of Appeal ("Appeal") to the NJMC regarding the NOV dated January 16, 2007. Petitioner stated that it has no intention to store any goods, materials or supplies in any other location other than the internal 5,000 square feet of leased space and represents that no outside storage of goods, materials or supplies will occur in the future. The parties have decided to amicably resolve the matter and have reached a mutually satisfactory agreement in the form of a Settlement Agreement.

At this time, the staff is requesting that the Commission authorize the Executive Director to execute a Settlement Agreement with United Showcase/Mark Jameson Contractors, Inc. to conclude the matter on appeal before the Office of Administrative Law. A resolution requesting same is attached for your consideration.

ANNE MILGRAM  
 ATTORNEY GENERAL OF NEW JERSEY  
 R.J. Hughes Justice Complex  
 25 Market Street  
 P.O. Box 093  
 Trenton, New Jersey 08625  
 Attorney for Respondent  
 New Jersey Meadowlands Commission

By: Penny S. Ludman  
 Deputy Attorney General  
 (609) 984-6811

OFFICE OF ADMINISTRATIVE LAW  
 DOCKET NO. HMD 03075-2007

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UNITED SHOWCASE/MARK JAMESON	:	
CONTRACTORS INC.,	:	
	:	<u>Civil Action</u>
Petitioner	:	
	:	SETTLEMENT AGREEMENT AND
v.	:	WITHDRAWAL OF REQUEST
	:	FOR HEARING
NEW JERSEY MEADOWLANDS	:	
COMMISSION,	:	
Respondent.	:	

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Petitioner, Mark Jameson Contractors Inc. ("Petitioner") is a tenant at property located at 114 Moonachie Avenue, Moonachie, New Jersey ("the Property").

The Property is owned by United Showcase, Inc. ("Showcase") and is located in what is known as the Light Industrial B zone of the Meadowlands District.

Historically, Showcase has manufactured components used in Petitioner's chimney business. In the past, finished goods were

stored at the Property and constituted inventory that Petitioner would use on an as-needed bases.

Prior to December 1, 2006, the previous tenant vacated the Property and Petitioner and Showcase determined it would be in their mutual best interests for Petitioner to rent 5,000 square feet of space at the Property for storage of goods and sundry items such as loose brick and mortar sometimes needed for Petitioner to effectuate emergency chimney repairs referred on off-hours by PSE&G.

On December 1, 2006, Respondent, New Jersey Meadowlands Commission ("NJMC"), conducted an inspection of the Property and concluded that Petitioner was occupying space on the Property without benefit of NJMC approval or permit.

On December 1, 2006, the NJMC issued a Notice of Violation ("NOV") ordering Petitioner to file an application within fifteen (15) days of the NOV.

On December 13, 2006, Petitioner submitted an application for an occupancy certificate to the New Jersey Meadowlands Commission ("NJMC") for a warehouse use.

On December 28, 2007, the NJMC conducted an inspection of the Property.

On January 16, 2007, based on the inspection, the NJMC advised that it determined that the conversion of the Property from a photography studio into a contractor's yard was made without



benefit of NJMC approval in violation of N.J.A.C. 19:4-4.2, which states that no change of use shall take place without first obtaining a zoning certificate from the NJMC. The NJMC advised Petitioner that in accordance with N.J.A.C. 19:4-5.80(a), a contractor's yard or facility is not listed as a permitted use in the Light Industrial B zone.

Petitioner states that the pallet of bricks and bags of mortar observed outside during the NJMC inspection were from a delivery and that bricks and mortar will be forever stored inside the premises.

Petitioner states that it has no intention to store any goods, materials or supplies in any other location other than the internal 5,000 square feet of leased space and represents that no outside storage of goods, materials or supplies will occur in the future.

Based on the above, the parties have decided to amicably resolve the matter in dispute between them and have reached a mutually satisfactory agreement as to its disposition. The terms of the final settlement are agreed by the parties to be as follows:

1. Petitioner shall agree that there will be no outside storage of goods, materials or supplies.

2. The NJMC shall issue the zoning certificate and occupancy certificate permitting Petitioner's use of the Property as a warehouse facility which is a permitted use in the zone pursuant to N.J.A.C. 19:4-5.80(a).

3. Petitioner hereby withdraws its request for an administrative hearing and agrees that it will not raise any claims related to the denial in any other forum.

4. The above terms represent a full and final settlement of all issues with regard to this matter.

IT IS UNDERSTOOD, that the Office of Administrative Law, upon its receipt of notice of settlement of this matter, may accept it and dismiss the action, with prejudice.

For Petitioner, Mark Jameson Chimneys

By: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Frank Leanza, Esq.

\_\_\_\_\_  
Date

For Respondent,  
New Jersey Meadowlands Commission

By: \_\_\_\_\_  
Robert Ceberio  
Executive Director

\_\_\_\_\_  
Date

Anne Milgram  
Attorney General of New Jersey

By: \_\_\_\_\_  
Penny S. Ludman  
Deputy Attorney General

\_\_\_\_\_  
Date

**RESOLUTION AUTHORIZING THE ACQUISITION OF THE PROPERTY  
KNOWN AS BLOCK 137, LOT 5 IN THE BOROUGH OF CARLSTADT IN  
CONNECTION WITH THE SETTLEMENT OF GEORGE MARTIN AND  
GEORGE F. BARNES V. NEW JERSEY MEADOWLANDS COMMISSION,  
SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CIVIL PART,  
BERGEN COUNTY, DOCKET NO. L-2679-04**

**WHEREAS**, the above action was commenced on March 10, 2004 by George Martin and George F. Barnes, who asserted that the New Jersey Meadowlands Commission (NJMC) had taken their property by inverse condemnation; and

**WHEREAS**, NJMC maintained that there had been no inverse condemnation and that the claims of Martin and Barnes were not ripe; and

**WHEREAS**, subsequently, motions to dismiss and motions for summary judgment were filed by the parties; and

**WHEREAS**, the parties in an effort to resolve the matter, reached a settlement, pursuant to which the property would be acquired by the NJMC for the sum of \$500,000; and

**WHEREAS**, the NJMC desires to convey the property thereafter for the purpose of wetlands mitigation.

**NOW, THEREFORE, BE IT RESOLVED**, that the NJMC authorizes the resolution of the above matter, authorizes the Executive Director to acquire the property for the sum of \$500,000 for use as a wetlands mitigation site, either as part of an NJMC mitigation project or by conveyance to another entity that has a wetlands mitigation obligation within the District, provided that NJMC receives at least \$500,000 consideration for any conveyance of this site.

**BE IT FURTHER RESOLVED**, that the Executive Director is hereby authorized to execute any and all documents that may be necessary for the real estate transactions described herein.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-98

# Memorandum

P. 138

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio

From: Robert R. Ceberio, Executive Director Date: October 24, 2007

Subject: Acquisition of Block 137, Lot 5 in Carlstadt in Connection with Settlement of George Martin and George F. Barnes v. NJMC

The matter of George Martin and George F. Barnes v. New Jersey Meadowlands Commission, Superior Court of New Jersey Law Division - Civil Part, Bergen County, Docket No. L-2679-04 was commenced on March 10, 2004 by George Martin and George F. Barnes, who asserted that the New Jersey Meadowlands Commission (NJMC) had taken their property by inverse condemnation. NJMC maintained that there had been no inverse condemnation and that the claims of Martin and Barnes were not ripe. Subsequently, motions to dismiss and motions for summary judgment were filed by the parties.

In an effort to resolve the matter, the parties reached a settlement, pursuant to which the property would be acquired by the NJMC for the sum of \$500,000. The NJMC desires to convey the property thereafter for the purpose of wetlands mitigation.

The attached resolution authorizes the Executive Director to acquire the property for the sum of \$500,000 for use as a wetland mitigation site either as part of an NJMC mitigation project or by conveyance to another entity that has a wetlands mitigation obligation within the District and to execute all documents that may be necessary for the real estate transaction.

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO  
APPROPRIATE FUNDS TO DISTRICT MUNICIPALITIES UNDER THE  
MUNICIPAL ASSISTANCE PROGRAM (MAP)**

**WHEREAS**, the Hackensack Meadowlands District consists of fourteen municipalities, ten in Bergen County and four in Hudson County; and

**WHEREAS**, many municipalities, because of financial constraints, cannot afford to purchase equipment, undertake repairs, expand recreational facilities and address flooding issues; and

**WHEREAS**, the New Jersey Meadowlands Commission (NJMC) created the Municipal Assistance Program (MAP) to facilitate these purchases and repairs and provide property tax relief to the fourteen Meadowlands communities; and

**WHEREAS**, a formalized grant application and guidelines for the MAP Program were established per Resolution #06-83.

**NOW, THEREFORE, BE IT RESOLVED** that the New Jersey Meadowlands Commission authorizes the Executive Director to appropriate \$1.4 million from the MAGNET fund for the Commission's 2008 Municipal Assistance Program; and

**BE IT FURTHER RESOLVED** that a grant application and guidelines will be mailed to each District municipality and award announcement letters will be sent upon careful review of the applications.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

# Memorandum

P. 140

## New Jersey Meadowlands Commission

To: NJMC Commissioners

From: Robert R. Ceberio, Executive Director Date: October 24, 2007

Subject: Municipal Assistance Program (MAP)

This Resolution authorizes the Executive Director to appropriate \$100,000 to each of the fourteen district municipalities, totaling \$1.4 million under the Municipal Assistance Program (MAP). These funds will be appropriated from the New Jersey Meadowlands Commission's (NJMC) MAGNET fund. This grant program will provide the municipalities with financial support to purchase equipment, undertake repairs, expand recreational facilities and address flooding issues. This grant will help limit property tax burden on the constituents of these municipalities by providing necessary financial support to our District municipalities.

The current established guidelines provide the municipalities with rules, requirements and procedures that must be followed in the grant process. The municipalities are required to complete the MAP application in its entirety in order to be considered for MAP grant funding. Award announcement letters will be sent upon careful review of the applications.



**RESOLUTION AUTHORIZING  
A LEASE CONTRACT ON A NEW COPIER**

**WHEREAS**, the lease agreement on the mail room copier is expiring this month; and

**WHEREAS**, NJMC staff has investigated state contract vendor proposals; and

**WHEREAS**, IKON Office Solutions is a New Jersey state contract vendor; and

**WHEREAS**, the new contract with IKON would be \$655.58 per month (inclusive of supplies and service) - a \$519.62 savings per month with a total savings of \$24,932.16 over the 48-month term.

**NOW THEREFORE BE IT RESOLVED** the New Jersey Meadowlands Commission is hereby authorized to enter into a lease agreement with IKON Office Solutions, a state contract vendor, at a cost of \$31,467.84.

The foregoing Resolution was adopted by Commission vote.

\_\_\_\_\_  
Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

\_\_\_\_\_  
Robert R. Ceberio  
Secretary

Resolution No. 07-100

# Memorandum

## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Irfan A. Bora Date: October 24, 2007

Subject: Lease for new copier

The lease agreement on the mail room copier is expiring this month. NJMC staff has accordingly investigated state contract vendor proposals. It is staff's recommendation to choose IKON Office Solutions, a New Jersey state contract vendor.

We are currently paying \$1,175.00 per month and the new contract with IKON would be \$655.58 per month for 48 months (inclusive of supplies and service) - a \$519.42 savings per month with a total savings of \$24,932.16 over the lease term.

**RESOLUTION: CLOSED SESSION**

**WHEREAS**, the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the holding of closed session by public bodies in certain circumstances; and

**WHEREAS**, the New Jersey Meadowlands Commission is of the opinion that those circumstances presently exist.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. That a closed session of the NJMC will be held to discuss the following:
2. It is anticipated at this time that the above subject matter(s) will be made public upon completion of said matter(s).

This Resolution shall become effective immediately.

The foregoing Resolution was adopted by Commission vote.

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Joseph V. Doria, Jr.  
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of October 24, 2007.

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Robert R. Ceberio  
Secretary

Resolution No. 07-101